# The Solicitors' Journal

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## Current Topics.

### Judicial Changes.

For some time past it has been common knowledge that Lord Justice Lawrence intended to resign at the end of the Michaelmas Sittings; that intention has now become an accomplished fact, and the Court of Appeal loses by his retirement a vigorous judge, one who knew his work thoroughly and always expressed his views with a clarity and precision that left no doubt as to his meanng. The announcement that Mr. Justice Maugham is to be his successor as Lord Justice dispels the notion which apparently has been entertained in some quarters that in view of the drastic recommendations of Lord Hanworth's Committee in its second report there would be no further appointments to the Court of Appeal as a separate body. Much consideration should be given before such a far-reaching proposal is carried into effect; the Court of Appeal may not be perfect—what institution is?—but it has distinct merits which are not likely to be surpassed by the suggested reconstruction and the abolition of the office of Lord Justice. Now, it is sufficient to say that an excellent choice has been made by the Prime Minister in promoting Mr. Justice Maugham to the vacant Lord Justiceship. At the Bar, where he was for some years one of the Chancery "specials," he had a very large practice, and on his appointment to the judgeship rendered vacant by the promotion of Mr. Justice (now Lord) Russell to the Court of Appeal it was recognised that the Chancery Division had received another powerful recruit. Since he became a judge he has contributed a large number of decisions of first-rate importance to the reports, in which his extraordinary knowledge of case law has been conspicuous. Indeed, law runs in the veins of the new Lord Justice. His grandfather was one of the founders, and for thirty-five years the secretary, of The Law Society, as well as the editor of the long defunct *Legal Observer*, while his father was a solicitor practising in Paris, where he was the legal adviser of the British Embassy. Like his brother, Mr. Somerset Maugham, the well-known dramatist, he inherits the literary aptitudes of his grandfather, and this, incidentally, found expression a year or two ago in the new Lord Justice's masterly study of the *Calas Case*, the French *cause célèbre*, which also engaged the pen of Voltaire. The vacancy created in the Chancery Division by the promotion of Mr. Justice Maugham has been filled to the entire satisfaction of the Bar by the appointment of Mr. Stafford Crossman, who will bring to the discharge of his new duties a wide experience of equity proceedings, in addition to that of the special class of work that for some years has fallen to him as junior counsel to the Treasury in the Chancery Division, a post in which many of his predecessors on the Bench may be said to have graduated. We have spoken of Mr. Justice Maugham being "promoted" to the Court of Appeal, and promotion it certainly is in point of dignity, for each Lord Justice is sworn of the Privy Council and is on that account entitled to be designated, "The Right Honourable," but while this is so, no increase in salary follows the change of court. When Mr. Justice A. L. Smith was congratulated by a friend on his translation to the Court of Appeal his only comment was "No more wages, you know!" On this occasion, as on so many others, he justified the witty remark of Lord Bowen that there was always a "distressing nudity" about A.L.'s language.

### Hilary Law Sittings.

Except in the Chancery Division, the Probate, Divorce and Admiralty Division, and the New Procedure List of the King's Bench Division, the number of cases down for hearing in the superior courts for the Hilary Law Sittings shows a decline from the number for the corresponding term of last year. The total number of actions, motions, company and other matters in the Chancery Division is 348 as against 261 last year. There is an increase of seventy-seven in the undefended divorce petitions, the figure this year being 695, a great part of the increase, however, being due to arrears from last term. There are 367 probate and defended causes, compared with 220 a year ago; thirty-one common jury actions as against twenty-three a year ago; and five special jury actions as against twelve last year. In the ordinary lists in the King's Bench Division the special jury actions have decreased by ninety-two, the number this year being 170, the common jury by 211, the number this year being 229, and non-jury by sixty-two, the number this year being 181. On the other hand, the New Procedure List is completely justified by an accretion of 151 cases, the number this year being 227. Work in the Divisional Courts has declined by about fifty, the number of cases this year being 167, while in the Courts of Appeal seventy-eight appeals compare with ninety-two for the corresponding term of last year. The general outlook for 1934 is thus far from gloomy, such decreases as have occurred being partly due to welcome improvements in procedure.

### Committee on Law Revision.

Law Reform is at last making steady headway. First of all, the Master of the Rolls' Committee on Procedure, whose recommendations have been causing such interest: now a Committee to deal with questions of substantive law. The new Committee which has been established by the Lord Chancellor is a Standing Committee to consider how far, having regard to the Statute Law and to judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to them require revision in modern conditions. The Committee consists of The Master of the Rolls (Chairman), Lord Wright, Lord Justice Romer,

Mr. Justice Swift, Mr. Justice Goddard, Mr. Cyril Asquith, Professor H. C. Gutteridge, K.C., Professor A. D. McNair, Mr. W. E. Mortimer, Mr. Terence O'Connor, K.C., Sir Reginald Ward Poole, Mr. S. L. Porter, K.C., Sir Claud Schuster and Mr. A. F. Topham, K.C., and from such a body, as representative as it is distinguished, some interesting proposals may be expected to emerge. It is perhaps a pity that the Committee should be limited to topics referred to them instead of being at liberty to select matters which seemed to them to be important. Meanwhile, however, a good start has been made with the first four topics on which the Committee is asked to report as soon as may be; the doctrines that there can be no contribution between joint tortfeasors, that the death of a human being gives no right of action in tort apart from statute, and that a husband is responsible for his wife's torts, and the limitations on the right to claim interest in civil proceedings, have all been the subject of considerable comment and discussion, both in cases and in text-books, and it is satisfactory that the desirability of their continued existence should be carefully examined. To say that such a Committee is long overdue is not to minimise in any way the warm welcome which it will receive.

## Third Party Insurance Again.

We have frequently drawn attention to the loopholes in the protection afforded to third parties by ss. 35 to 44 of the Road Traffic Act, 1930, and the necessity for amending legislation (77 Sol. J. 738, 839). The legal position was made quite clear in such cases as *Rogerson* v. *Scottish Automobile and General Insurance Co.*, 48 T.L.R. 17; *Adams* v. *London General Insurance Co.*, 42 Ll. L. Rep. 56; *Bright* v. *Ashfold* [1932] 2 K.B. 153 (76 Sol. J. 344); *Greenlees* v. *Port of Manchester Insurance Co.* [1933] S.C. 383; *Smith* v. *Coulter* (*The Times*, 13th October); and *Gray* v. *Bickmore* (77 Sol. J. 765). The defect was again emphasised on 14th December by Mr. Justice Goddard in *Jenkins* v. *Deane* (*The Times*, 15th December), where he remarked that "as the Act had left approved insurers to make any bargain that they chose with their insured, except on a minor point dealt with by s. 38 of the Act, it might well happen that, after the accident, the injured party found that the insurers could repudiate liability, either because of some mis-statement or breach of warranty on the part of the insured, or because of some condition in the policy which exempted from liability." The short facts of the case were that the plaintiff had recovered judgment for £2,600 against a firm of haulage contractors in respect of her husband's death arising out of a motor accident. The judgment was unsatisfied, but a partner in the haulage firm assigned to the plaintiff all the rights and interest under a previous policy of insurance, wherein the defendant underwriter promised to indemnify the haulage firm against all sums which the latter should be legally liable to pay by way of compensation for accidental loss of life. The plaintiff sued the underwriter, who pleaded *inter alia* breach of the conditions in the policy by the assured. Mr. Justice Goddard gave judgment in the plaintiff's favour for the amount of her claim, with costs, and a declaration that the underwriter was liable under the policy. Among the instances described by Mr. Justice Goddard of the hardship that results from this state of the law was that of the motor bicycle speed maniac who has a small weekly wage and mis-states the number of accidents in which he has been involved when effecting his third-party insurance. A third party is seriously injured in an accident arising out of the negligence of the motor cyclist and the insurance company exercises its legal right to repudiate liability under the policy. "There have been," said his lordship, "a disturbing number of cases in this list recently in which I have been told, on the summons for directions, that the insurers are disputing liability . . . This state of things constitutes a serious inroad on the value of compulsory insurance as a protection to the public." Amending legislation should be speedily forthcoming to remedy this serious injustice, the existence of which has again been authoritatively stressed.

## Highways and Rights of Adjoining Owners.

The law with regard to the respective rights of highway authorities and the owners of adjoining land is fairly well settled. The presumption is that the owner of land adjoining a highway is entitled in fee simple to the soil under it *ad medium filum*, and if he owns the land on both sides to the whole of the soil. Only the surface of the road and so much of the subsoil as is necessary for the support of that surface vests in the highway authority, so that the latter cannot prevent electric wires from being carried over the road or a sewer beneath it: *Finchley Electric Light Co.* v. *Finchley Urban District Council* [1903] 1 Ch. 437; *Baird* v. *Tunbridge Wells Corporation* [1894] 2 Q.B. 867. A recent decision of Farwell, J., in *Herts County Council* v. *Lea Sand Co. Ltd.* (11th December) though it involved no new law, is of some interest in its application of the law to somewhat complicated facts and claims. About the year 1900 there was a level crossing at Broxbourne which the railway company desired to close and to replace by a bridge, and accordingly an agreement was entered into between the County Council, the Epping District Council and the owner of the land for the construction of a new road and bridge. The land adjoined the River Lea and was low-lying and subject to floods, and therefore the agreement provided that it was to be carried for some distance on brick abutments or arches. The agreement was confirmed by private Act, but was not carried into effect until 1909. By 1930 the land on both sides of the new road had been acquired by the defendant company, and a dispute arose as to who was entitled to the land underneath the arches. The defendants had been using the openings for access from one side to the other, and for carrying pipes and electric power cables. The action was commenced in 1931, the plaintiffs claiming that the piers and arches together with the land underneath them, and an embankment on which part of the road was carried, were vested in them, and that the defendants' land was, in effect, cut in half by the road. The defendants on the other hand contended that nothing vested in the county council except the surface of the road and sufficient of the subsoil to support it. But neither of these contentions prevailed, Farwell, J., holding that both sides had put their case too high, especially the plaintiffs. The road was not merely the surface, but the total of the surface and the whole of the artificial structure, arches or embankment, on which it rested. But, he held, the soil underneath the arches did not vest in the plaintiffs but remained the property of the defendants, though the plaintiffs had a right of access to it and to the defendants' adjoining land for the purposes of repair and inspection. Had the plaintiffs been a private individual, probably the action would not have been brought, but the Herts County Council was in a different position, and could not surrender its statutory rights. There was no authority exactly covering the case. The learned judge refused to decide a question which he held might only arise in the future, and made no order as to costs.

## The Road and Rail Traffic Act, 1933.

The provisions of this important Act have now, by the Road and Rail Traffic Act, 1933 (Date of Commencement) Order (No. 2), 1933 (S.R.O. 1933/1200), been brought into force as from the 1st January, with the exception of s. 1 (1) and (8) and s. 30. The Act introduces a system of licensing of goods vehicles on the lines recommended in the Salter Report, and also makes provision for the maintenance of such vehicles in a fit and serviceable condition. Important amendments to the Road Traffic Act, 1930, and to the Railways Act, 1921, are also made. We hope to deal in detail with the effect of the Act in next week's issue.

# Bail for Misdemeanour.

ALL the difficult legal questions as to bail arise upon charges of misdemeanour, and it is with misdemeanour alone that this article is concerned.

At several points in the progress of a criminal case through the courts the question of bail may arise: on remand before justices, on committal for trial by justices, during the course of the trial, upon appeal. We shall limit our discussion to bail on remand and on committal for trial.

Upon remand the justices have complete discretion whether to grant bail, whether the offence charged be felony or misdemeanour: Indictable Offences Act, 1848, s. 21. If they admit to bail they must exercise their discretion judicially in fixing the amount. It is unlawful to fix excessive bail, that is, to require sureties for such sums as to make it impossible for the defendant to secure that he shall be at large until the next hearing.

It is said ("Douglas' Summary Jurisdiction," 9th ed., p. 190) that it has been doubted whether a judge has power to bail a person on remand for a misdemeanour when a magistrate has refused bail, and *R.* v. *Bennett* (1870), 34 J.P. 701; 49 L.T.N. 387; and *R.* v. *Atkins* (1870), 49 L.T.N. 421, are cited. It is added that both Lush, J., and Brett, J., held that the power existed. Reference to the reports in the *Law Times* shows that both cases were applications after committal for trial, and not while on remand. They turned, too, on the question whether a defendant was or was not entitled of right to be liberated on bail after committal for trial for misdemeanour. Another case is noted in "Douglas," *Ex parte Mullins* (1884)—not reported elsewhere—where Mathew, J., had refused to bail a person on remand for a misdemeanour and the court afterwards applied to (Pollock, B., and Lopes, J.), held that a defendant had no right to bail under the Act until after committal. But in *R.* v. *Manning* (1888), 5 T.L.R. 139, the Divisional Court, while not themselves admitting to bail, directed the magistrate to do so.

There is an Irish case where the King's Bench Division of the High Court in Ireland held that it had jurisdiction, in a proper case, to bail a prisoner while on remand; but the court will be slow to overrule a magistrate who in his discretion has decided not to accept bail during a remand, *R.* v. *Israelovitch* [1919] 2 I.R. 47, 524, noted "English and Empire Digest," vol. 14, p. 163, note r. In *R.* v. *Beall* [1899] Q.B.D., noted "Archbold's Criminal Pleading," 28th ed., p. 91, Channell, J., said that "if the power existed the court would be very slow to interfere with the justices' decision."

In *R.* v. *Spilsbury* [1898] 2 Q.B. 615, at p. 622, Lord Russell of Killowen, C.J., said: "It is not the usual practice for this court to admit persons charged with misdemeanours to bail during remand in ordinary cases arising in this country. This view is supported by the following statement in 'Short and Mellor's Crown Office Practice,' p. 374, after referring to 11 & 12 Vict. c. 42, s. 21: 'This section gives a discretion to justices as to bail, during the preliminary enquiry. With this discretion the judges usually decline to interfere, and it is indeed said that it is absolute, and cannot be reviewed; but this assertion is somewhat difficult to reconcile with the assumption of law, based probably on Magna Charta, and enacted in the Habeas Corpus Act, 31 Car. 2, c. 2, that persons charged with any crime, unless treason or felony, are entitled to bail as a matter of right on finding sufficient sureties. Doubts, however, have been entertained as to whether this power of the Queen's Bench applies to persons under remand, two learned judges having held that it does; but in a case where a judge had refused to bail at chambers a defendant under remand for misdemeanour, the court on appeal decided that a defendant under remand on a charge of misdemeanour had no right to bail under 11 & 12 Vict. c. 42 until committal; and the cases are referred to.'"

Kennedy, J., said: "I have come only with considerable hesitation to the conclusion that we have power to admit to bail; but I entirely concur in the view that the burden of proof lies upon the party who asserts that the ancient and important jurisdiction of this Court to admit to bail is taken away by the statute."

In the second edition of "Short and Mellor's Crown Practice," where the passage quoted by Lord Russell of Killowen above appears on p. 281, it is added, "This only means that a prisoner has no right of bail under the statute; it does not oust the jurisdiction of the King's Bench to allow bail in all cases prior to trial."

The court, in the exercise of its discretion in this case (a fugitive offender's case), based their claim to have a discretion on their assumed power to bail prisoners on remand.

In recent times High Court judges have occasionally admitted to bail a prisoner on remand for a misdemeanour. Even if the better view be that they have no power to do so, there is no practical way of making this view prevail. The inconvenience of the other view is that if judges *can* grant bail on remand it may be they *must* do so (but on this question of discretion see what follows as to bail after committal for trial).

Upon a committal for trial justices have complete discretion as to granting or refusing bail, but again if they grant bail it must not be excessive. Formerly they had to consider whether the misdemeanour was or not one of those listed in s. 23 of the Indictable Offences Act, 1848, or one the costs of the prosecution of which could be allowed out of the county rates. If it was, they had discretion; if not, they were compelled to admit to bail the accused person committed for trial. But now, by the Costs in Criminal Cases Act, 1908, the costs of the prosecution of any indictable offence are allowable out of the county rate, and consequently the justices' discretion is unfettered in all cases.

But the alleged misdemeanant may have recourse to a judge of the High Court, and upon committal for trial the justices must inform him of this right: Criminal Justice Administration Act, 1914, s. 23.

At this stage the really interesting question arises. Must the High Court judge grant bail, or can he refuse?

The text books' statements upon this point are:—

"Stone's Justices' Manual," 65th ed., p. 27, note (*m*): "A judge has also discretion to refuse bail, even in cases of misdemeanour"; *R.* v. *Spilsbury, infra*, is cited, which we shall fully examine later. The statement is repeated at p. 204, where *R.* v. *Phillips, infra*, is also cited as authority. We shall have something to say upon this case also. The editors of "Archbold's Criminal Pleading, Evidence and Practice," 28th ed., p. 87, are less definite, "It is questionable whether bail in misdemeanour is of right at common law." The cases cited are *R.* v. *Spilsbury, infra*; *R.* v. *Badger* (1843), 4 Q.B. 468, 12 L.J. M.C. 66; and *Re Frost* (1888), 4 T.L.R. 757. We shall consider all these in their place. "Douglas' Summary Jurisdiction Procedure" has: "It was formerly considered that by the common law a judge had no discretion to refuse bail in misdemeanour, although by this Act (the Indictable Offences Act, 1848) a justice of the peace had such discretion." *R.* v. *Bennett, infra*; *Re Frost, supra*; *R.* v. *Manning* (1888), 5 T.L.R. 139; *R.* v. *Phillips, infra*, are cited.

The cases will now be briefly considered in their chronological order, both those cited above and others.

*Marriot's Case* (1697), 1 Salk. 104; 91 E.R. 96. Marriot was committed for forging endorsements upon Exchequer bills; and upon a *habeas corpus* was bailed; "because the crime was only a great misdemeanour."

*R.* v. *Badger and Cartwright* (1843), 4 Q.B. 468; 114 E.R. 975. One O'Neil was committed for trial for seditious language used at an unlawful assembly. The magistrates fixed bail but refused two sufficient sureties. A criminal information was sought but refused. All the case is of value for is the *dictum*, embodied in the headnote, that "bail, if otherwise sufficient, ought not to be refused on account of the personal character or opinions of the party proposed." Why

"Archbold" cites it as relevant on the question whether bail in misdemeanour is of right it is a little difficult to see.

*R.* v. *Peatley and Another* (1844), 8 J.P. 854. Two men had been committed for trial for what was alleged to be a felony. It was not clear to the judge there was any offence at all. But, said Patteson, J.: "The prisoners have a right to be admitted to bail, if it is only a misdemeanour."

*R.* v. *Pestle* (1846), 10 J.P. 88. Prisoner committed for misdemeanour. Argued, "since the case of *R.* v. *Badger and Another, supra*, it was clearly settled that parties charged with misdemeanour had a strict right in point of law to be admitted to bail." A rule was granted.

*R.* v. *Kinchan* (1846), 10 J.P. 89. The Lord Mayor of London committed two men for trial for misdemeanour, fixed bail and then refused to accept sureties. Rule granted. This case resembles *R.* v. *Badger, supra*.

*R.* v. *Bennett* (1870), L.T.N. 387. Lush, J., "was clearly of opinion that in cases of misdemeanour a defendant was entitled as of right to be liberated on finding bail." The application, as pointed out above, was after committal for trial.

*R.* v. *Atkins* (1870), 49 L.T.N. 421. Brett, J., inquired if it was true that Lush, J., had done as described above, and granted bail; again after committal.

*R.* v. *Foote* (1883), 10 Q.B.D. 378. This was an attempted appeal to the Court of Appeal against the refusal of bail by a Divisional Court. The Court of Appeal refused to entertain the appeal. But it shows the Divisional Court refusing bail for misdemeanour—the indictment was for blasphemous libel. But the application for bail was not after committal but later, after the discharge of a jury which had disagreed, and pending a fresh trial.

*Ex parte Mullins* (1884), is fully described above.

*Re Annie Frost* (1887), 4 T.L.R. 757. A prisoner had been committed for trial for misdemeanour. A judge in chambers refused to admit her to bail. At the Central Criminal Court the trial was put off for counts to be added to the indictment. The recorder refused bail. Another application was made to a judge in chambers, who referred the case to a Divisional Court. During the course of the argument it was said: "It has always been laid down that the Court of Queen's Bench has a discretion to admit to bail in any case, and, if so, the court can hardly be bound to do it in any case." Lord Coleridge: "The court may do it in any case, but must do it in cases of misdemeanour." Argument continued: "The law laid it down then" (i.e., in Lord Mansfield's time) "and ever since, that the court had a discretion, if so there would not be an absolute obligation to do it." Mr. Justice Denman: "There is a discretion in granting bail, but not in refusing it in misdemeanour." In the end the court admitted to bail.

*R.* v. *Manning* (1888), *supra*, is described above.

*R.* v. *Spilsbury* [1898] 2 Q.B. 615, was the case of a fugitive offender committed for return under the Fugitive Offenders Act, 1881. The High Court refused bail pending his return. The judgments are interesting. Lord Russell of Killowen, C.J., expressly pointed out that the defendant had not been committed for trial, so that the question of an absolute right to bail did not arise.

*R.* v. *Beall* [1899] and *R.* v. *Israelovitch* [1899] are sufficiently dealt with above.

*R.* v. *Phillips* (1922), 38 T.L.R. 897, was an extradition case, and the King's Bench Division held that after committal for extradition for misdemeanour, the judges were not bound to grant bail. A committal for extradition is not a committal for trial; and the judges based their claim to discretion on an analogy between such a committal and a remand. There were, however, *obiter dicta*. Lord Hewart, C.J.: "The proposition" (that justices have a discretion and the High Court none) "was obviously a remarkable one . . . It was a conclusion at which he would be sorry to arrive unless it were made abundantly clear."

"In his view it was not the law that the King's Bench Division could not refuse bail."

The inconvenience of fettering the judges' discretion was admirably put by Sir Chartres Biron, the late chief magistrate, in dealing, in December, 1931, with a case where he committed two men for trial who had previously absconded from their bail: see *The Times*, 22nd December, 1931. Incidentally he makes clear his own opinion that the judges' discretion is fettered:—

"These cases are startling examples of an anomaly in English law to which the legislature might profitably turn its attention.

"The two defendants are charged with misdemeanours: Crane in one case with obtaining £1,200 by fraud, in the other, with Braithwaite jointly, obtaining or endeavouring to obtain the sum of £12,000 by fraud.

"Crane was originally charged at Marlborough-street in March of this year. He obtained his release on bail, himself in £2,000 and one surety in £1,000, and absconded from that bail and used his liberty to assist Braithwaite in the alleged fraud now before me. He has since been re-arrested and is now before me.

"Braithwaite was charged before me three years ago on an extradition charge, in which he was alleged to have obtained £23,500 by fraud. For reasons peculiar to that case, he was released upon bail, one surety in £1,000 and himself in £1,000, and absconded. He is now before me on a similar charge, under another name. I am asked to allow bail in both cases.

"The law on the subject of bail is clear. In cases of felony the magistrate has complete discretion. In cases of misdemeanour after committal the accused is entitled to obtain his discharge on bail on a writ of *habeas corpus*, by applying to a judge in chambers.

"The result is interesting. A man steals 5s. and can be refused bail because larceny is a felony. A man can obtain by fraud thousands, and is entitled to bail, if that fraud is a misdemeanour. This is a privilege of which many in the past, like the two prisoners, have taken the fullest advantage.

"The mischief is the more serious as many of the worst commercial frauds are made misdemeanours by their creative statutes.

"To grant these men bail under the circumstances of these cases would be an abuse of that privilege and bring the administration of justice into contempt. In the exercise of my discretion I refuse to do so.

"I am required by the law to remind them that they are entitled to apply to a judge in chambers, whose discretion in such matters is so curiously fettered by a law long out of touch with modern conditions."

An examination of the cases set out above reveals that where the issue was clear cut, whether there is or is not an absolute right to bail after committal for trial, the decision was always in favour of the right, save in the case of Frost, where we do not know why the judge in chambers refused bail. In other cases there are *dicta* assertingthe existence of discretion, but they are cases where the question of bail arose after the accused had been before a jury or they are extradition and fugitive offenders' cases, more analogous to remands than committals for trial. The real weight of the cases seems to us to be on the side of no discretion in the judge after committal and before trial. Even if the *dicta* be allowed the value of precedents there is such confusion of opinion that we adopt the contention put forward by counsel for Hampden, also on an issue as to bail, when suing for a writ of *habeas corpus* after committal by the Privy Council, "Though the precedents look one way or the other, they are to be brought back unto the laws by which the kingdom is governed." Till these laws are changed the Habeas Corpus Act gives to a person committed for trial for misdemeanour an absolute right to bail.

In modern times the old rule is inconvenient and would, as Sir Chartres Biron, pointed out, be a proper subject for legislative revision, on the lines to which the judges' views have in more recent times tended, the use by them of a discretion in all cases, whether the accused be detained in custody on remand or on committal for trial.

## Considerations for a Purchaser's Solicitor.

[CONTRIBUTED.]

IN the present article it is proposed briefly to consider a few points which, in the writer's opinion, should engage the attention of a solicitor acting for an intending purchaser of land, prior to the signing of the estate contract.

While not suggesting for one moment that there is any appreciable degree of culpable negligence among conveyancers, the writer feels strongly that the maximum standard of care and diligence is frequently not exercised by solicitors acting on behalf of clients who are purchasing property. This shortcoming is, in many cases, not a deliberate failure by practitioners to perform their known duty towards their clients, but a failure to realise what that duty is. It is here submitted that, in a conveyancing matter, a solicitor's duty is not merely to see to it that his client gets a good title to the property he purchases, but that he gets what he wants. If a client goes to his solicitor and says to him that he wishes to purchase a certain parcel of land, the solicitor should, in the present writer's view, ascertain from his client the purpose for which he intends to use the property, and then consider whether it is suitable for this purpose before allowing him to commit himself by signing a contract. To some this may seem a rather exaggerated view of the functions of a solicitor, but they should remember that quite a large number of laymen enter into contracts for the purchase of property without giving the matter the requisite amount of serious consideration. In the old days this question was not of such great importance as it is at the present time. Restrictions, and exceptions and reservations, were less common and less serious than they are to-day, and the vast majority of real property which changed hands was possessed by a class who understood something about it. But, with the growth of a new owner-occupier class, and the increasing tendency on the part of small investors to put their savings into "bricks and mortar," it has come about that many of the property owners, and prospective property owners, of to-day are in the habit of treating all real estate as being alike, save for its geographical position. But the lawyer knows that there are many traps and pitfalls to ensnare the unwary purchaser, and he should, on all occasions, use his best endeavours to see that these are successfully negotiated by his clients.

The first important matter which claims the attention of a purchaser's solicitor is, as every practitioner knows, the perusal of the draft contract, and the necessity of doing this piece of work thoroughly and well cannot be over-emphasised. When an intending purchaser has signed his contract, he can be made to take a conveyance in accordance with its terms and, if the draft has been settled without due care, he may find that he has bought a good deal less than he at first imagined. One important matter when settling a draft contract is that, by virtue of s. 198 of the Law of Property Act, 1925, the equitable doctrine of notice has been extended. Registration of anything registrable under the Land Charges Act now gives actual notice of it. Section 198 of the Law of Property Act and the decision in *In re Forsey and Hollebone's Contract* [1927] Ch. 492, C.A. 823, render it practically imperative for a purchaser's solicitor either to make searches before the signature of the contract, or to insist on the insertion of a provision to the effect that the property is sold free from all incumbrances and other matters capable of registration, whether actually registered or not, which are not therein specified.

The facts in *In re Forsey and Hollebone's Contract* are briefly as follows: By contract dated 10th December, 1926, the vendor agreed to sell to the purchaser certain property in fee simple free from incumbrances, with the exception of those specified in the contract. Subsequently to the signing of the contract, it was discovered that the property fell within the ambit of a resolution to prepare a town planning scheme. This resolution was, in fact, registered as a land charge prior to the signing of the contract, but neither the vendor nor the purchaser then knew of its existence. It was held by Mr. Justice Eve that the resolution being only a potential interference with the owner's rights was not an incumbrance within the meaning of the contract, and this decision was affirmed by the Court of Appeal. That is all the case actually decided, but Mr. Justice Eve also laid it down that even if the resolution were an incumbrance, the purchaser would still be bound to take the property subject to it, as, under s. 198 of the L.P.A., 1925, she had actual notice of it at the time the contract was signed.

Another provision of the L.P.A. which should be borne in mind by a purchaser's solicitor, when settling the draft contract, is s. 62. It is not so much what this section does, as what it leaves undone, that is his chief concern. Its object is to shorten conveyances. Prior to the coming into operation of the Conveyancing Act, 1881, it was the practice of draughtsmen to incorporate in conveyances what were known as "general words." These "general words" were a kind of omnibus clause whose object was to give to the purchaser such rights, privileges and advantages, *de facto* enjoyed with the land, as would not pass under the conveyance without special mention. But, by s. 6 of the Conveyancing Act, 1881, now. s 62 of the L.P.A., comprehensive general words are to be implied in conveyances made after 1881, unless a contrary intention is therein expressed. This statutory implication of words which had by usage become common form has undoubtedly been a convenience to draughtsmen, but the limitations of the section must not be overlooked. It does not apply to contracts. *In re Peck and the School Board of London* [1893] 2 Ch. 315, Chitty, J., dealing with s. 6 of the Conveyancing Act, said: "Its object is to show what general words will be taken as included in a conveyance of land or houses where the conveyance is silent on the point. It is the conveyance alone with which the Legislature is dealing, not the contract. Neither party is entitled to have words included in the conveyance unless those words are justified by the contract." The facts in *Re Peck and the School Board of London, supra*, were as follows: The School Board gave the vendor notice to treat for the compulsory purchase of the land and houses in the schedule thereto, "with the appurtenances." The land had buildings erected thereon to which the vendor used a way of access over an adjoining piece of waste land, belonging to himself, but not included in the notice. This way was neither a way of necessity nor a made road, and the vendor claimed to have the general words implied by s. 6 of the Conveyancing Act so limited as to prevent the way from passing by the conveyance. Chitty, J., upheld the vendor's contention, and, in the course of his judgment, said: "In my opinion it is necessary to exclude the operation of s. 6 of the Conveyancing Act, 1881, altogether."

In *Re Walmsley and Shaw's Contract* [1917] 1 Ch. 93, the defendant agreed to purchase "the following land buildings and material etc." The property was described in the contract, but no right of way was included. It could be reached by a public footpath, and also by a cart track which crossed other land of the vendor. The cart track had from time to time been used, with the vendor's permission, by tenants living on the property contracted to be sold, for the carriage of goods more easily removed by cart. It was held that on the true construction of the contract no right of way over the cart

track had been given to the purchaser, and that the provisions of s. 6 of the Conveyancing Act could be excluded by the vendor from the conveyance. When construing the words " et cetera " in the course of his judgment, Mr. Justice Eve said : " The most I think they could be held to include would be rights appurtenant to the land and buildings."

The case of *Clark* v. *Barnes* [1929] 2 Ch. 368, takes the matter a step further. In 1925 the plaintiff purchased from Lord Abergavenny a strip of land subject to a right of way for the benefit of adjoining property then belonging to the vendor. Shortly after completion, Lord Abergavenny's estates in the district were put up for sale by public auction. Lot 24 included the property having the right of way over the strip of land previously purchased by the plaintiff, and this right was expressly included in the parcels. This lot was purchased by the plaintiff, and the right of way was thereupon merged, safe in so far as it was exercisable by a tenant of Lot 24. At the same auction sale the defendant purchased lot 6, which abutted on lot 24. Shortly afterwards the plaintiff agreed to sell to the defendant part of the land purchased by him at the auction sale. No mention of any right of way was made in the agreement. It was incorporated in the draft conveyance, but struck out by the plaintiff's solicitors, who made the following marginal note thereon : " No mention is made in the contract of any right of way. The purchaser can obtain access from his own land." After completion the defendant claimed to use the way as of right. In the action, Luxmoore, J., held that as the right of way was not a way of necessity it did not pass under the contract, but that it was implied in the conveyance by virtue of s. 62 of the L.P.A. As, however, Luxmoore, J., found that it was agreed at the time of the contract that no right of way should be granted, the conveyance was ordered to be rectified by the insertion therein of words limiting the operation of s. 62 so as to exclude the right of way.

The morale to be drawn from the above cited cases is that a purchaser's solicitor should be careful to have the benefit of the appropriate sub-section of s. 62 of the L.P.A. incorporated in the contract, i.e., if the subject-matter of the sale is land, sub-s. (1), or if it is land and buildings, sub-s. (2). This can be done by some such clause as the following : " The provisions of sub-s. ( ) [here insert the appropriate sub-section] of s. 62 of the L.P.A., 1925, shall apply to this contract as if it were a conveyance."

Having satisfied himself that his client will obtain all the advantages that the vendor can give, the purchaser's solicitor should turn his attention to any restrictive covenants which are contained or referred to in the draft contract. These restrictive covenants should be weighed very carefully, and their effect accurately explained to the purchaser. Far too often restrictive covenants are read over to, and accepted by, clients when they are but dimly understood. They are, perhaps, in a common form, and treated by solicitors as normal incidents of a building estate ; but it must be remembered that clients expect land to be free and unfettered, and even where they see covenants and restrictions set out in a document they often fail to grasp their significance, treating them as mere bits of legal jargon. It is not sufficient to tell a client that a covenant is usual in a certain district. He should know its exact significance, and then he can judge for himself whether the property so burdened is what he really wants. Similarly, exceptions of mines and minerals should receive the close attention of a purchaser's solicitor. Familiarity with such exceptions and reservations has bred a good deal of contempt, and many members of the legal profession appear to overlook the fact that land from under which minerals have been got, does, not infrequently, subside. The writer has personal knowledge of cases where houses built since the war have subsided to such an extent as to make them uninhabitable. How often one may ask, is such a possibility put fairly to a client before he signs his contract.

# Law Revision.

THE appointment, terms of reference, and personnel of the new Committee on Law Revision have been mentioned already in a Current Topic (p. 17), but it is of interest to examine the state of the law as it now stands upon the questions which have been referred to the Committee for consideration.

1. The first question upon which they are asked to report as soon as may be is the question of contribution between joint tortfeasors. This is commonly known as the rule in *Merryweather* v. *Nixan* (1799), 8 T.R. 186, based apparently on the notion that such a claim to contribution can only arise from an implied contract between the joint tortfeasors. Of course, if there were any question of any such contract it would clearly be contrary to public policy and void, but why a contract should be implied any more than in contribution between joint sureties it is hard to see. The doctrine has, however, been limited to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act (see *Adamson* v. *Jarvis* (1827), 4 Bing. 66, at p. 73), but even so limited it has called forth some strong observations. For example, in *Palmer* v. *Wick and Pulteneytown Steam Shipping Co.* [1894] A.C. 318, Lord Herschell, L.C., said at p. 324 : " It is now too late to question that decision (i.e., *Merryweather* v. *Nixan*) in this country ; but when I am asked to hold it to be part of the law of Scotland, I am bound to say that it does not appear to me to be founded on any principles of justice or equity or even of public policy which justifies its extension to the jurisprudence of other countries." Salmond, too, in his book on " Torts," 7th ed., 1928, at p. 103, makes pointed criticisms. Two statutory exceptions have been made by the Companies Act, 1929, s. 37 (3), as regards directors liable for misrepresentation in a prospectus, and by The Maritime Conventions Act, 1911, s. 3, as regards loss of life or injuries caused by two ships both being at fault.

A similar topic which may also be dealt with is the right of a tortfeasor to recover indemnity, for example, under a policy of insurance. The modern law is based on the judgment of Kennedy, J., in *Burrows* v. *Rhodes* [1899] 1 Q.B. 816, and there was a full discussion in the recent case of *Haseldine* v. *Hosken* [1933] 1 K.B. 822. It has been held, however, that motorists guilty of negligence, even of manslaughter, were entitled to recover from their insurance companies (see *Tinlin* v. *Whitecross Insurance Association* [1921] 3 K.B. 327, and *James* v. *British General Insurance Co.* [1927] 2 K.B. 311), though some doubt seems to have been cast on these decisions by the Court of Appeal in *Haseldine* v. *Hosken*. With regard to libel, it has been held that there can be no contribution of indemnity by a publisher against an author (see *W. H. Smith & Son* v. *Clinton* (1908), 99 L.T. 840), and it would seem that though every newspaper is, of course, insured against liability for libels, the insurance company is under no legal obligation to pay.

Similarly the position may well be considered where a collision occurs between two motor cars, both of which have been in some respect negligent. It is not in that case a question of contribution between joint tortfeasors, because according to the decision in *The Koursk* [1924] P. 140, each party is severally liable for the whole of the damage caused. A civil court might well be given power in such cases to apportion the responsibility as is done in Admiralty.

2. The second question the committee are asked to report on is the legal maxim *actio personalis moritur cum persona*. This was clearly enunciated in *Baker* v. *Bolton* (1808), 1 Camp. 493, where it was held that a husband, though entitled to damages for the loss of his wife's society and services owing to injury wilfully or negligently caused, has no such right for the loss of his wife altogether by her being killed. The rule was further propounded in *Osborn* v. *Gillet* (1873), L.R. 8, Ex. 88, *Clark* v. *London General Omnibus Co.* [1906] 2 K.B. 648 (in the latter of which it was held that even funeral

expenses were irrecoverable at common law) and *The Amerika* [1917] A.C. 38. It was, of course, in order to get rid to some extent of the injustice caused by the rule that Lord Campbell's Act was passed in 1846. The curious thing, however, is that according to *Jackson* v. *Watson & Sons* [1909] 2 K.B. 193, the rule has no application to breach of contract; a person guilty of however innocent a breach of contract, for example selling food which he had no reason to know was bad, incurs a liability which a person guilty of however gross a tort escapes.

3. The third question referred to the committee is the liability of a husband for the torts of his wife. A vigorous onslaught was made on this rule in *Edwards* v. *Porter* [1925] A.C. 1, but it failed. The argument was that at common law the husband was joined in the action because the married woman could not be sued alone, that the Married Women's Property Acts had abolished the legal fiction of the unity of husband and wife and had enabled the wife to be sued alone, and therefore, that *cessante ratione cessat lex*. This argument carried Lords Birkenhead and Cave, but was neatly demolished by Lord Sumner at p. 38, in the phrase: "The Act of 1882 was a Married Women's Property Act, not a Married Man's Relief Act." Thus, the rule still stands, and it would seem that if a woman leaves her husband and goes to live with another man whom she has enticed from his wife, the husband has to pay the enticement bill.

4. The fourth question for the moment referred to the committee is the state of the law relating to the right to recover interest in civil proceedings. A full discussion of this topic citing a very large number of decisions will be found in "Roscoe's Evidence in Civil Actions," 19th ed., 1922, vol. 1, pp. 508-512. Briefly, the position is that there are four cases where interest can be claimed:—

(*a*) Under the Bills of Exchange Act, 1882, s. 9 (3) interest from the date of issue of the bill is recoverable if the bill is expressed to be payable with interest. If the bill is silent about interest the holder can recover as liquidated damages interest from the time of presentation for payment if the bill is payable on demand, otherwise from the date of maturity.

(*b*) Interest can be claimed under a common money bond conditioned for the repayment of half the amount with interest. This is an example of the next heading, but is separate because a claim could be specially indorsed under Ord. 111, r. 6.

(*c*) Interest is payable where there is an agreement, express or implied, to that effect. If the rate was fixed by agreement, the claim could be specially indorsed under the old r. 6, Ord. 111, but otherwise a separate claim had to be made. The implication only arises where the conduct or course of dealing between the parties clearly points to such an agreement.

(*d*) Under Lord Tenterden's Act, 1833, s. 28, interest is recoverable in two cases; firstly, upon debts or sums certain payable under a written instrument at a certain time; and secondly, if payable otherwise, then from the time when a demand of payment was made in writing. In both cases the interest is within the province of the jury to award as damages if they think fit. And, by s. 29, the jury can award damages in the nature of interest over and above the value of the goods in actions of trover, and over and above the money recoverable under a policy of insurance.

The leading case on the whole subject is *London, Chatham and Dover Railway* v. *South Eastern Railway* [1893] A.C. 429, and there was some discussion in *Swift & Co.* v. *Board of Trade* [1925] A.C. 520. In the former it was held that interest by way of damages for detention of a debt could not be recovered, the law being clearly settled if unsatisfactory. The time has now come when such a state of things can, if necessary, be remedied.

# Company Law and Practice.

**De facto Directors.**

It is fully recognised by the legislature that difficulties of various kinds may arise where persons have acted as directors when they are afterwards discovered not to have been directors in law when they were so acting. There is a variety of reasons whereby directors may either not be validly appointed directors, or may cease to be such during their period of office, and it would be absurd to attempt to enumerate them here; the legislature has attempted to meet difficulties of the nature suggested by means of s. 143 of the Companies Act, 1929, which reads as follows:—

"The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification."

Table A takes the same line; here is Art. 88:—

"All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director."

Practically every set of articles contains a similar provision, and it is certainly desirable from every point of view that every set of articles should have such a provision. The reasons for this statement will, I hope, appear more clearly later, when some of the points which have actually arisen in practice have been discussed.

There are two distinct lines of cases to which the section may apply, namely, as between outsiders and the company, and in relation to the internal affairs of the company. The first type of case is one on which there is a good deal of authority, and perhaps I should mention the two familiar names of *Royal British Bank* v. *Turquand*, 6 El. & Bl. 327, and *Mahony* v. *East Holyford Mining Co.*, L.R. 7, H.L. 869. These deal with the familiar proposition that outsiders are bound to take notice of what may be called the external position of the company, but need not concern themselves with mere matters of domestic management.

The two cases which I have quoted, and which were for many years the sheet anchor of those who had to advise on questions of this sort, now need to be carefully considered in the light of more recent cases, such as *Houghton* v. *Nothard Lowe & Wills Limited* [1928] A.C. 1; and *Kreditbank Cassel G.m.b.H.* v. *Schenkers Limited* [1927] 1 K.B. 305. I am not going here to commit myself to the statement that these cases cannot be reconciled, but what I do say is that they need careful thought before they can be applied. The subject which they raise is too big a one to be dealt with here and now; but for those who are interested I would recommend them to read an article by Mr. Registrar Stiebel in the July, 1933, number of the "Law Quarterly Review," on "Ostensible Powers of Directors."

But I think we are digressing somewhat from the path marked out at the beginning of this article—a consideration of the effect of s. 143. This section is limited to a validation of the acts of directors who are directors *de facto* but not *de jure*, while the doctrine referred to above goes much further, and at the same time may be said to cover a great deal, if not the whole, of the ground covered by the section so far as it concerns outsiders. A case in which the section was held to apply was *Hallows* v. *Fernie*, 3 Ch. App. 467, an action based on misrepresentation in a prospectus, in which Lord Chelmsford says (at the foot of p. 473): "With respect to the objection upon the ground of want of qualification of the directors, it is answered by the legislative provision that the acts of any disqualified person acting as a director shall be as valid as if he were duly qualified." As regards outsiders, then,

the section may apply, but it has been held to apply also as between the company and its members: see *Dawson* v. *African Consolidated Land & Trading Co.* [1898] 1 Ch. 6. In this case, a call was purported to be made by persons who were acting as directors of a company, and the call was resisted by certain shareholders on the ground that the directors who had purported to make the call were not directors *de jure*. It was alleged that one of the directors had vacated office as a result of having parted with his shares; and a good deal of discussion took place as to the effect of an article similar to Art. 88 of Table A set out above.

In effect, the decision may be said to be a decision which sheds light on the true construction of s. 143 just as much as it sheds light on the true construction of Art. 88 of Table A of 1929. The Court of Appeal held, in *Dawson's Case*, that such irregularities as there might have been were cured by the article, but only on the footing that the call was made by the directors in ignorance of any possibility of disqualification.

This latter point was elaborated in the case of *British Asbestos Co., Ltd.* v. *Boyd* [1903] 2 Ch. 439, where there was an article which again was similar to 88 of Table A. In that case there was an article providing for the vacation of the office of director by any person who accepted or held any other office under the company, and another provision for vacation of office on resignation. At the material time there were three directors of the company, one of whom was, in October, 1902, appointed secretary of the company. He resigned his office of secretary and, at a board meeting held two days later, which he and one other director attended, a letter was put in by which the third director resigned. The meeting then proceeded to appoint the ex-secretary managing director of the company, and the next board meeting (attended by the same two) appointed X a director of the company. These three, who had no idea they were not, or might not be, directors, continued to act as such in good faith and summoned a general meeting of the company.

Thereupon action was taken by some of the members, who asked for a declaration that these three persons were not directors of the company and for an injunction to restrain them from acting as directors. Farwell, J., as he then was, held that the words "notwithstanding that it shall afterwards be discovered that there is some defect" meant that the defect is discovered, and not the facts which cause that defect. As the learned judge pointed out, the facts which cause the defect necessarily appear on the books of the company, as they did in *Dawson's case, supra*. "It is not, therefore," he says at p. 444, "that the facts are not known, but that the knowledge of the defect is not present to the mind of any person to whom it is material at the time to know it. As it is put in 'Buckley on the Companies Acts,' 8th ed., p. 230, the object of an article like this and the 67th section of the general Act is to make the honest acts of *de facto* directors as good as the honest acts of *de jure* directors; and although down to the decision in *Dawson's Case* the article and section were generally supposed to apply only as between members of the company and outsiders, and not as between members of the company *inter se* or members of the company and the company, *Dawson's Case* has now decided that that view of the law is incorrect, and that the section and the article are of general operation. I think it is decidedly beneficial that it should be so, and that, although there may be some slip which has been overlooked, if it has been *bona fide* overlooked, then the acts of the *de facto* directors are as good as the acts of the *de jure* directors."

Consequently, his lordship held that the three persons referred to were the properly elected board of directors and able to act as such. This seems to dispose of the chief cases to which reference need be here made, and I hope my readers will now appreciate the desirability of provisions of this sort.

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Sir Robert Mills Welsford, solicitor, of Hampstead and Aldermanbury, left £39,641, with net personalty £39,102.

# A Conveyancer's Diary.

**Trustee under S.L.A. out of the United Kingdom.**

I am afraid that I went wrong last week in the conclusion at which I arrived (too hastily as it seems) on this point. The question is whether a deed of declaration stating that a S.L.A. trustee has been out of the United Kingdom for more than a year and a new trustee has been appointed in his place requires execution by the absent trustee.

To make the answer to this question clear it is necessary to refer to the precise provisions of s. 35 of the S.L.A., which enacts—

(1) Whenever a new trustee for the purposes of this Act is appointed of a trust instrument or a trustee thereof for the purposes aforesaid is discharged without a new trustee being appointed, a deed shall be executed supplemental to the last or only vesting instrument, containing a declaratiou that the persons therein named, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for the purposes aforesaid, are the trustees of the settlement for those purposes; and a memorandum shall be endorsed on or annexed to the last or only principal vesting instrument in accordance with the Trustee Act, 1925.

(2) Every such deed as aforesaid shall, if the trustee was appointed or discharged by the court, be executed by such person as the court may direct, and, in any other case, shall be executed by—

(i) The person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or if no person is so named, or the person is dead or unable or unwilling to act, the person who if the vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees thereof;

(ii) The persons named in the deed of declaration as the trustees of the settlement; and

(iii) Any trustee who is discharged as aforesaid or retires.

(3) A statement contained in any such deed of declaration as is mentioned in this section to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall in favour of a purchaser of a legal estate be conclusive evidence of the matter stated.

This is a somewhat involved section and the wording of it must be carefully considered when endeavouring to apply it. I certainly thought, as I said last week, that when a trustee remained out of the United Kingdom and was discharged and a new trustee was appointed in his place, the trustee so discharged must execute the deed of declaration which is required to be executed by the section. That, I think now, is not so, for clause (iii) of sub-s. (2) only provides for the execution by "any trustee who is discharged as aforesaid," and looking at sub-s. (1) it will be found that the words "as aforesaid" refer to a trustee who "is discharged from the trust without a new trustee being appointed." Consequently it is only where a trustee is discharged or retires and no new trustee is appointed in his place that the deed of declaration required by s. 35 must be executed by the discharged or retiring trustee.

**Restrictive Covenants by a Lessor.**

I am indebted to Messrs. Sewell, Edwards and Nevill for a letter which is published in another column referring to my "Diary" of the 16th December 1933 (77 Sol. J. 877).

Our correspondents develop a point which I mentioned in my article, although I had no space to pursue it.

It will be remembered that the question arises upon s. 10 (1), Class D (ii) of the L.C.A., 1925, which provides for the registration of "A covenant or agreement (not being a covenant or agreement between a lessor and lessee) restrictive of the user of land entered into after the commencement of this Act."

The illustration which I gave was a lease of a shop in which the lessee covenants not to carry on any but a specified trade, and the lessor covenants that adjoining land shall not be used for carrying on any competitive trade.

To follow up that illustration, I asked how was the lessee to be protected against the lessor's successors in title to the adjoining land without notice of the covenant (which they would not necessarily have) using the land for a purpose which would be a contravention of the covenant?

Of course, if any future owner or occupier of the adjoining land had notice of the covenant he would be bound by it under the law as it stood before 1926—and would still be bound by it after that time, unless the covenant were one which was "capable of registration" under the L.C.A., 1925, and was not in fact registered. There seems to be no difference of opinion between our correspondents and myself as to that.

But, it will be best to see just how the matter stands so far as statutory provisions are concerned.

By s. 198 (1) of the L.P.A., it is enacted:—

> The registration of any instrument or matter under the provisions of the Land Charges Act, 1925, or any Act which it replaces, in any register kept at the land registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date, and so long as the registration continues in force.

Then s. 199 (1) provides that a purchaser shall not be prejudicially affected by notice of (*inter alia*):—

> (i) Any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof.

Before passing on, I may point out that in s. 198 (1) the expression used is "under the provisions of the L.C.A., 1925," whereas in s. 199 (1) (i) it is "capable of registration under the provisions of the L.C.A., 1925."

Now to turn to the L.C.A., 1925, itself. It is enacted by s. 10 (1) that "the following classes of charges on or obligations affecting land may be registered as land charges in the register of land charges, namely."

Pausing there, we have another expression "may be registered."

Then, under those which "may be registered" we find in Class D (ii):—

> A covenant or agreement (not being a covenant or agreement made between a lessor and lessee) restrictive of the user of land entered into after the commencement of this Act.

The logical consequence is that "a covenant restrictive of the user of land" (note it is not of *the* land) may not be registered if it is "made between a lessor and lessee."

It is true that such a covenant relating to land other than that demised is "an agreement collateral to that constituted by the lease," as our correspondents say, but it is none the less a covenant made between a lessor and lessee and, therefore, may not be registered unless words can be introduced into the clause which are not there and would, as I think, be contrary to the sense of it as it stands, having regard to the expression "restrictive of the user of land."

It may be that one of our judges will see his way to adopting the construction for which our correspondents contend and which would in effect amend the clause to conform with the presumed intention of the draughtsman, but I doubt it.

Of course it would be well to register such a covenant (if the registrar will accept it), but registration is not notice if the covenant is one which is not required to be registered.

# Landlord and Tenant Notebook.

**Aesthetic Considerations.—I.**

In these days, when threatened "acts of vandalism" tending to mar natural or architectural beauty invariably meet with local and sometimes with widespread opposition, and when authorities are empowered by Town and Country Planning Acts to veto such things as the design of a shop fascia, it may occur to many landlords and tenants that by apt provisions in leases it may be possible to combat ugliness if not to promote loveliness. The obvious difficulty is that expressed by the quotation: "Beauty is in the eye of the beholder"; landlord and tenant may have different views on what is ugly and what is lovely; and a tribunal called upon to decide between them may disagree with both. With this difficulty I shall deal later.

I do not know of any covenant that has been framed since the movement furthered by preservation societies, trusts, etc., was started; but there are various decisions upon provisions in older instruments which deserve the attention of any draftsman instructed to express the wishes of a landlord or tenant in this regard. The covenants which I propose to review may be divided in two ways; positive and restrictive, personal and impersonal. The latter division contrasts covenants giving the covenantee a say in the matter with covenants in which an objective test is applied. Thus, there are four kinds in all; and it will be seen that up to the present, covenantees have, except in one case, succeeded in enforcing restrictive covenants only. They have always failed when the obligation was both positive and impersonal; in the case of restrictive impersonal covenants, one success and one failure have been recorded.

The exception referred to was a case in which the circumstances were very special, and it looks as if the covenant could hardly be of any use as a precedent. *Oxford* v. *Provand* (1868), L.R. 2 P.C. 135, was an appeal from H.B.M. Supreme Court for China and Japan; appellants had agreed to take over a Shanghai building lease, under a rough agreement which said, *inter alia*, "P. & O. will consult O. & Co.'s wishes in finishing the houses now building, and in building the house not yet commenced (burnt down)." The agreement had been in part performed when differences arose, and it was then argued, for P. & O., that the terms were too vague to admit of a decree of specific performance. The judgment delivered in the Privy Council makes it quite clear that it was only in view of the evidence as to local conditions—difficulties as to obtaining skilled labour, difficulties of climate, etc.—plus the part performance (the wishes had already been consulted!) that they considered the remedy applicable.

Impersonal covenants, i.e., those in which reliance has been placed on adjectives qualifying things rather than persons, have failed to achieve their object in *Taylor* v. *Portington* (1858), 7 De G. M. & G. 328 (positive) and in *Murray* v. *Dunn* [1907] A.C. 283 (restrictive). In the former the son-in-law of the defendant, an intending tenant, conducting negotiations for her, wrote: "of the ornamental repairs I am really almost afraid to speak . . . the walls are not only broken in many places but they must be repapered throughout the house. The drawing-rooms we should require to be *handsomely* decorated *according to the present style*. Paint is required both inside and outside . . ." The plaintiff accepted the terms and instructed his surveyor. Disputes arose, and the action was brought for specific performance, which was ordered at first instance, the decree providing for the question of repairs and decorations to be referred to the judge in case of difference. On appeal,

Knight-Bruce, L.J., having considered the two qualifications italicised, considered that the "expressions had imported sufficient uncertainty into what might otherwise have amounted to an agreement sufficiently definite" to prevent a decree, but disallowed the appellant's costs. In *Murray* v. *Dunn* it was the inaptness rather than the uncertainty of the adjective which decided the case. The action was between the owners of St. Margaret's Tower, Edinburgh—not a building of beauty and historic interest, but property consisting of land and houses, of which one was "large and ornamental," the other "a villa"—and the trustees of the adjoining St. Margaret's Convent and a builder to whom they had sold some of their land and who proposed to erect tenement flats which, by reason of overlooking facilities on the one hand, and an array of pipes, clothes-lines, etc., on the other hand, would interfere with amenities. The pursuers relied upon a bond of servitude which bound the defenders "not to erect any building of an unseemly description." The only judgment delivered in the House of Lords, that of Lord Halsbury, dismissed the matter very curtly. "What may reasonably be seemly appears to be a question rather of the personal conduct of the individuals engaged than any characteristic of the building," is its gist. This view, I may say, is not borne out by the New English Dictionary, which gives, "unbecoming, unfitting" as primary, and "uncomely, unhandsome" as secondary meaning; an example of the latter is taken from an architectural journal.

The above cases stood for a long time as authorities tending to support the proposition that a positive personal covenant might just succeed, and that a restrictive impersonal covenant would not succeed. By "succeed," I mean, of course, be enforceable; it would preserve the *status quo*, and not allow of or make for harmonious development. But covenants of the latter kind were enforced in *Heard* v. *Stuart* (1907), 24 T.L.R. 104, and *Nussey* v. *Provincial Bill Posting Co. and Eddison* [1909] 1 Ch. 734, C.A. In the former, which concerned premises built on glebe land and let by the vicar, it is fair to say that there was some slight personal element, as there were covenants not only against altering the external appearance, but also against suffering anything that might be to the annoyance of the lessors or the neighbourhood. What was complained of was the use of a wall, which faced the churchyard, for advertisements of alcoholic beverages; and Joyce, J., said that, apart from the question of appearance, and allowing for the perhaps too sensitive feelings of vicar and congregation, they might well be seriously annoyed. The other case is of special interest, partly because of the analytical judgment given by Cozens-Hardy, M.R., and partly because of the dissenting judgment (one of the many dissenting judgments which give one furiously to think) of Fletcher Moulton, L.J. The question was whether an advertisement hoarding constituted a breach of a covenant that no building should be erected (on a residential estate) to be used for manufacturing purposes, nor for the carrying on of any noisy, noisome, offensive or dangerous trade, and argument centred round the word "offensive." Counsel for one defendant urged that the utmost that could be said against the hoarding was that it was "a blot on the landscape." Cozens-Hardy, M.R., said: "In this context this may mean offensive not to the ear, not to the nose, nor by way of danger, having as an obvious meaning offensive to the eye . . . The word 'offensive' is, I think, to be construed relatively to the person contemplated as enjoying the benefit of the stipulation," etc. While Fletcher Moulton, L.J.'s, dissenting judgment says "'offensive' has nothing to do with the purely aesthetic susceptibilities of possible owners of adjacent land . . . We have no right to say because 'offensive' is an adjectival derivative from the verb 'offend' that whatever offends is rightly termed offensive."

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Mr. Frank Pepin Welman, solicitor, of Chalfont St. Giles and Bayswater, left £21,859, with net personalty £5,428.

# Our County Court Letter.

## THE WORKMEN'S COMPENSATION ACT, 1931, S. 1.

In the recent case of *Cox* v. *Earl of Dudley's Baggeridge Colliery Co. Ltd.*, at Dudley County Court, an award was claimed in the following circumstances: (1) the applicant had been injured on the 12th December, 1932, and had received £1 3s. 4d. a week as compensation until the 21st June, 1933; (2) the respondents then claimed that he was capable of doing light work, and were willing to employ him as a pikeman; (3) the applicant was not capable of doing such work, as his back had been injured by a fall of coal. In a reserved judgment, His Honour Judge Tebbs held that the respondents were correct in their contention (viz., that the applicant was capable of light work), but the applicant was also correct in contending that the work offered was unsuitable. The result was that, although the applicant was only partially incapacitated, he was entitled to compensation on the basis of total incapacity. An award was therefore made of £1 3s. 4d. a week from the 21st June, 1933 (with costs), His Honour remarking that, as most workmen were in the same position, the matter might form a fit subject for an appeal.

## GRAVES DISEASE AND WORKMEN'S COMPENSATION.

The question of liability for an old accident was considered at Alfreton County Court in the recent case of *Johnson* v. *Blackwell Colliery Co. Ltd.*, in which a widow claimed an award of £200 for herself and £74 for her child, aged ten years. The applicant's case was that (1) on the 13th August, 1925, the deceased had sustained a compound fracture of the left arm, and (by reason of the bone not uniting) he had spent months in hospital; (2) after two years' treatment he returned to light work, but gave up in May, 1930, owing to bad health; (3) in July, 1930, he developed exophthalmic goitre, from which he died on the 24th June, 1933; (4) the accident had contributed to the condition of the deceased, as the treatment and repeated disappointments had set up Graves disease. The medical evidence for the respondents was that there could have been no connection between the accident and the death, but His Honour Judge Longson made an award as claimed, with costs.

## VENDOR'S RIGHT OF RE-SALE.

A question as to the improper exercise of the above was recently considered at Bristol County Court in *Pontin* v. *Pope*, in which the claim was for £50 as damages for breach of contract. The plaintiff's case was that (1) in June she offered the defendant £50 for a cottage, for which he was asking £80, (2) the defendant nevertheless accepted the offer, and (having received £1 as deposit) he signed a contract, providing for payment of the balance on the 12th July, (3) the contract was first read over to the defendant (who had difficulty in reading) but—in spite of his knowledge of the date for completion—the defendant sold the cottage to another purchaser for £70, on the 15th June. The defendant's case was that (*a*) he was in need of money and the contract was conditional upon the balance being paid on the 12th June—not the 12th July, (*b*) the manner of reading the contract was fraudulent, as he had queried the date (12th July) but had been induced to sign by misrepresentation, viz., that a period must be allowed for legal formalities, (*c*) not having received the balance (on the 12th June) he thought the bargain was cancelled, and that he was free to re-sell. It was pointed out for the plaintiff that there was no counter-claim for rescission, and His Honour Deputy Judge F. A. Wilshire observed that (1) the defendant had not raised the question of fraud, even when seeing his solicitor on the 27th June, (2) the real issue was, therefore, one of damages. Judgment was accordingly given for the plaintiff for £36 5s. and costs.

# To-day and Yesterday.

## Legal Calendar.

8 January.—Lord Chief Justice Rede, who died on the 8th January, 1519, and was buried in the Chapel of St. Catherine, at the Charterhouse, had a care alike for the body, the mind and the soul. He founded a chantry of £8 a year for thirty years; he left £100 to Jesus College to found a fellowship and a brewery (quaint conjunction!) and he established three public lectures at Cambridge on humanity, philosophy and logic. Simple times he lived in; when he was promoted to the head of the Court of Common Pleas in 1506, no one, apparently, thought it odd that he should have to pay the king 400 marks.

9 January.—The appointment of William Alexander to the head of the Court of Exchequer on the 9th January, 1824, was an exceptional choice, since he had for fifteen years filled the comparatively obscure position of a Master in Chancery. His lack of acquaintance with any branch of law but equity made him dubious of his own ability to fill the post, and the whole profession shared his misgivings. However, contrary to expectation, he did very well and gave great satisfaction for seven years, till he resigned to make way for Lord Lyndhurst.

10 January.—Charles Edward Pollock, the son of the great Chief Baron, and for long his private secretary and marshal, was himself raised to the Bench of the Court of Exchequer on the 10th January, 1873. He outlived his court, which perished in the reforms of 1875, and survived to be the last of the Barons and among the last of the Serjeants when Serjeants' Inn was dissolved. Without the originality and force of character of his father, he was yet an excellent judge, courteous, considerate and scrupulously conscientious.

11 January.—The law migrated from Westminster to the Strand when the Royal Courts of Justice were used for the first time on the 11th January, 1883. In a court, packed to overflowing, the Lord Chief Justice referred to the historic occasion of departure from "that great and illustrious building," Westminster Hall, expressing the hope that in a new habitation would continue the "unbroken tradition of mutual dependence and harmony between the bench and the Bar." The tradition has continued, but Street's unpractical maze, "the grave of modern gothic," will never be a "great and illustrious building."

12 January.—Sir James Scarlett, having been raised to the head of the Court of Exchequer in the previous month, was, on the 12th January, 1835, granted a peerage with the title of Baron Abinger of Abinger, in Surrey, where he had bought an estate. He was the first Chief Baron to enjoy a peerage during his term of office. Thereafter, he was known to his family and friends as "Bingie." At the Bar he had been almighty, but on the Bench he was something of a disappointment, for juries which he had led where he would as an advocate, refused to submit to his dictation as a judge.

13 January.—In 1838, Hilary term opened with a long and severe frost, and at his house in Hamilton Place, overlooking Piccadilly, Lord Eldon was dying. On the 10th, he had collapsed as his butler was helping him down to dinner, and though he took his place at table, he sank from that moment. On the twelfth, his doctor remarked: "It is a cold day, my lord." "It matters not to me where I am going whether the weather here be hot or cold," replied Lord Eldon. They were his last words, and on Saturday, the 14th January, at a quarter past four in the afternoon, he died.

14 January.—Lord Kinloss was one of the Scots who invaded England when Caledonia's Sixth James took her throne. He was Master of the Rolls from 1603 till his death on the 14th January, 1611.

## The Week's Personality.

It was Edward Bruce, one of the senators of the College of Justice, whom King James chose as his ambassador to the English Court, in 1600. His mission was ostensibly to congratulate Elizabeth on the collapse of the revolt of the Earl of Essex; actually, it was to forward the Scottish King's pretensions to succeed to the throne of England when the old queen should die. Adroitly, he went to work and did so much by private understandings with the leading men in the country that, on his return home, his services were duly rewarded, in confident anticipation of final success, with the gift of the dissolved abbey of Kinloss which shortly afterwards provided his title when he was raised to the peerage—Lord Bruce of Kinloss. When Elizabeth's death ripened the harvest he had sowed, he went south with his royal master, and less than three weeks after their arrival in England he was appointed Master of the Rolls. Nor was this the limit of his good fortune. The king admitted him to his Council, conferred on him an English peerage, promoted a splendid marriage for his daughter, whom he gave away with his own hand, making up her dowry to £10,000, and bestowed on him large grants of money and lands. Well might his epitaph on his tomb in the Rolls Chapel conclude with the lines:—

"*Conjuge, prole, nuro, genero, spe, reque beatus;*
*Vivere nos docuit, nunc docet, ecce, mori.*"

## Sentence of Death.

It is curious to compare the almost laconic death sentences of the present with the tedious sermons which judges of an earlier day considered it their duty to inflict on the convicted. "The jury have found you guilty of murder. It is my duty to pass sentence according to law." Thus McCardie, J., to Ronald True, following the example of brevity which Mr. Baron Bramwell was probably the first to set when, addressing Richard Reeve, he said: "My duty is to pass on you the sentence of death for that offence and that is my only duty." Religious exhortations, once a matter of course, have faded and diminished. They were affectingly conspicuous when Bucknill, J., breaking down at the ordeal of sentencing a brother Mason, urged him to repentance: "I pray you again to make your peace with the Great Architect of the Universe. Mercy—pray for it, ask for it . . ." The high-water mark of judicial preaching was reached in the long address of Park, J., to the murderer Thurtell: "Pour yourself out at the feet of your Redeemer in humbleness and truth, and to his grace and mercy I commit you . . ." Whatever one may think of the propriety of such judicial sermons, they are above all reproach compared with the brutal and flippant fashion once prevalent in Ireland, where Lord Norbury, C.J., sentencing a man for stealing a watch, could say: "My good fellow, you made a grab at time, but egad! you caught eternity."

## Judgment by Subtraction.

In these days when actions arising out of 'bus collisions so often present us with the spectacle of what Mr. Justice McCardie used to call "*esprit de voiture*"—one load of passengers honestly and unanimously swearing in direct contradiction of the other—it may be practical to remember a summing up once delivered at the Exeter Assizes by Mr. Justice Perrott. He was not a great judge but he seems to have had an ingenious mind. "Gentlemen," he said, "there are fifteen witnesses who swear that the watercourse used to flow in a ditch on the north side of the hedge. On the other hand, gentlemen, there are nine witnesses who swear that the watercourse used to flow on the south side of the hedge. Now, gentlemen, if you subtract nine from fifteen, there remain six witnesses wholly uncontradicted, and I recommend you to give your verdict accordingly for the party who called those six witnesses."

# Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

## Restrictive Covenants by a Lessor.

Sir,—We were interested to see the comment on "Restrictive Covenants by a Lessor" contained in "A Conveyancer's Diary" in your issue of 16th December, 1933 (77 SOL. J. 877).

The point dealt with is one which we, in acting for lessees, have considered many times since the new legislation came into force.

Can it not be argued that a covenant by a lessor, such as that referred to in the comment, is one not entered into between a lessor and a lessee as such, but in the broader capacities of covenantor and covenantee.

Although a certain relationship may exist between two persons (in this case that of lessor and lessee) it does not follow that everything which may be done between them is done in pursuance of such relationship.

A covenant by a lessor with a lessee and affecting land other than that demised appears to us to constitute a contract collateral to that constituted by the lease.

We should be interested to know what your learned contributor has to say to the suggestion that a covenant by a lessor affecting land other than that demised should, in practice, be registered.

SEWELL, EDWARDS & NEVILL.

Bucklersbury, E.C.4.
19th December, 1933.

## Mr. T. R. S. Perry, deceased.

Sir,—As I feared, the necessity has arisen, owing to the tragic death of our Hon. Secretary, Mr. Perry, in the Imperial Airways liner on the 30th December, to open a fund for the benefit of his widow and two young children, both boys.

Mr. Perry, who was only thirty-five years of age, was thus cut off very early in life without the slightest warning, and without having had an opportunity of adequately providing for his young family. Unfortunately the maximum amount that may be recovered from the Imperial Airways is limited by international agreement, and is totally insufficient to provide for his dependents.

My Council therefore feel that Mr. Perry having rendered loyal and devoted service to this Association and the profession in this capacity and on the Committee of the Solicitors' Clerks' Pension Fund, some recognition should be made by raising a fund in his memory for the benefit of his widow and two children. If a sufficient sum can be raised for the purpose, it is proposed to create a trust to be known as the "Perry Memorial Fund," and to utilise the same for the widow and for the education and benefit of her two children, and with a view to subsequently placing them in life, and I have full confidence that the legal profession will make a ready response to our appeal for this purpose.

I should like to mention that Messrs. Wordsworth, Marr Johnson & Shaw (with whom the late Mr. Perry was for many years managing clerk) have headed our list with a handsome contribution of £250, a cheque for which we have received, and my Association has made a first contribution of £50, and hopes to make a second payment.

All contributions sent to the Hon. Treasurer, Solicitors' Managing Clerks' Association (Perry Fund), at Arundel House, Arundel Street, Strand, W.C.2, will be gratefully acknowledged, or they can be sent direct to The National Provincial Bank, Ltd., Arundel Street Branch, for The Perry Memorial Fund.

J. FRANCIS TAYLOR,
President,
The Solicitors' Managing Clerks' Association.

Arundel House,
Arundel Street, W.C.2.
10th January.

# Obituary.

### SENATOR J. TESSIER, K.C.

Senator Jules Tessier, K.C., died at Quebec on Saturday, 6th January, at the age of eighty-one. The son of The Hon. U. J. Tessier, Judge of the Court of Queen's Bench, he was educated at Quebec Seminary, at St. Mary's (Jesuit) College, Montreal, and at Laval University, where he obtained the degree of B.C.L. In 1874 he was called to the Quebec Bar and he took silk in 1900. From 1886 to 1903 he was member of the Quebec Legislature for Portneuf, and from 1897 to 1900 he was Speaker. In 1903 he was summoned to the Senate for De La Durantye. He was also editor for several years of the *Quebec Law Reports*, and he was founder and one of the editors of the Liberal paper *Le Clarion*.

### MR. J. TANNER.

Mr. Joseph Tanner, Barrister-at-Law, of Stone Buildings, Lincoln's Inn, died at Seaton on Wednesday, 3rd January, in his eighty-first year. Mr. Tanner was called to the Bar by Lincoln's Inn in 1878.

### MR. H. H. HOWELLS.

Mr. Harry Haywood Howells, retired solicitor, of Newport, Mon., died recently at the age of seventy. Mr. Howells, who was admitted a solicitor in 1906, was formerly with Messrs. Davis, Lloyds and Wilson, of Newport. He retired from active practice in March of last year.

### MR. W. T. RYLANCE.

Mr. William Turner Rylance, solicitor, of Ashton-upon-Mersey, Cheshire, died suddenly on Tuesday, 26th December, at the age of seventy-three. He was educated at Rossall School and, on being admitted a solicitor in 1882, he went into partnership with his father. When his father died in 1903, Mr. Rylance became senior partner with his brother, and on the latter's death, some years later, he became and remained the sole head of the firm. He was also chairman of Hardy's Brewery for many years. Mr. Rylance was the oldest member of Sale Rugby Club, and was also for many years president of the Ashton Golf Club.

### MR. C. B. STACPOOLE.

Mr. C. B. Stacpoole, B.A., retired solicitor, of Bournemouth, died at Shaftesbury on Thursday, 28th December. Mr. Stacpoole, who served his articles with Messrs. Trevanion, Curtis and Ridley, of Bournemouth, was admitted a solicitor in 1904.

# Books Received.

*The Road and Rail Traffic Act*, 1933—*An Explanatory Handbook*. By ARTHUR G. DENNIS, LL.M., and T. D. CORPE, Solicitors of the Supreme Court. 1934. Demy 8vo. pp. 202. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

*Six Trials*. By WINIFRED DUKE. 1934. Crown 8vo. pp. 287. London: Victor Gollancz, Ltd. 5s. net.

*Servitudes in the Law of Scotland*. By T. A. Ross, B.L., Ph.D., Solicitor, Falkirk. 1933. Royal 8vo. pp. iv and 72. Edinburgh: W. Green & Son, Ltd. 5s. net.

*Easements of Light*. Vol. II. Optical and Photographic Methods of Assessing Depreciation. By JOHN SWARBRICK, F.R.I.B.A., M.Inst.Struct.E. Introduction by G. H. B. KENRICK, K.C., LL.D. Supplementary Chapters by A. C. STEVENSON, M.Sc., F.R.A.S. 1933. Royal 8vo. pp. xx and (with Index) 198. London: B. T. Batsford, Ltd. Manchester: The Wykeham Press. 30s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

# Notes of Cases.

## High Court—Chancery Division.

### *In re* Beni-Falkai Mining Co. Ltd.

Maugham, J. 6th December, 1933.

COMPANIES—VOLUNTARY LIQUIDATION—PROFITS—INCOME TAX CLAIM—EXPENSES OF LIQUIDATION—LIQUIDATOR'S REMUNERATION—COMPANIES ACT, 1908, ss. 171, 193 and 196.

The company owned and worked mines and railways in Algeria under a French Government concession. In 1925, conditions made it necessary, in the shareholders' interests, to transfer the business to two French companies, excepting from the transfer cash and other assets thought sufficient to pay the preference share capital in full. The ordinary shareholders were to be remunerated out of the proceeds of the transfers. On approval of the scheme, the company went into voluntary winding up, a liquidator being appointed at £1,000 a year, and the company appearing solvent. The French companies having been incorporated and having agreed to adopt the scheme, worked the mines and railways as agents for the liquidator. Owing to adverse trade conditions in 1926, the value of the stocks of ore fell and on realisation produced £170,239, while the liquidator's disbursements, including his own remuneration and travelling expenses, amounted to £171,125. The concessions and assets in Algeria had not been realised. Subsequently, the mine was closed and only the minimum staff retained to protect the property. The French companies went into liquidation, and the French liquidator took possession of the assets in Algeria which would have been available for claims. In this summons the Crown claimed as a creditor in respect of income tax under Sched. D, including an assessment of £487 16s. made in 1930, payable on profits earned by the company since liquidation. The actual cash in hand was insufficient, and it was asked that the liquidator's remuneration and travelling expenses should be struck out of his account and that he should be ordered to pay the claims out of those moneys.

MAUGHAM, J., in giving judgment, referred to the Companies Act, 1908, the relevant statute at the date of liquidation, ss. 171, 196 and 193. Rule 187 (1) of the Rules of 1909, though not applicable to the present case, provided a useful analogy as showing a fair way of dealing with assets insufficient to pay all costs and leave something over for creditors. However, it was not binding here, and further, income tax under Sched. D was not within the words "fees and actual expenses incurred in realising or getting in the assets." The question was whether the claim to tax was one of the expenses of liquidation within s. 171 read in conjunction with s. 196. First, income tax was a necessary consequence of the liquidator's acts in carrying on the business with a view to realisation and making a profit; secondly, income tax was a Crown debt. His lordship, after referring to *In re International Marine Hydropathic Co.*, 28 Ch. D. 470, and *In re National Arms and Ammunition Co.*, 28 Ch. D. 474, and to "Palmer's Company Precedents," 13th ed., p. 466, concluded that the words "expenses of the liquidation" and "expenses incurred in the winding up" included any expenses which the liquidator might have to pay in respect of his acts in the course of a proper liquidation, and therefore included income tax. His lordship added that as regarded the liquidator's remuneration, he was not in the position of a debenture-holder's receiver appointed by the court. On this view, the court had a discretion to order payment from the assets of the costs, charges and expenses, including the liquidator's remuneration, in such priority as seemed just. The question here was whether the liquidator should retain his remuneration, fixed when the company was deemed solvent. *Primâ facie*, all expenses, including income tax, should be paid before the liquidator's remuneration, but under s. 171, the court might provide for the remuneration for services rendered by way of salvage. Here he paid himself these sums when the assets seemed sufficient. His remuneration prior to the 1930 assessment should not be inquired into. There should be an inquiry as to what remuneration was proper for the subsequent period.

COUNSEL: *J. H. Stamp; H. F. F. Greenland.*

SOLICITORS: *Solicitor of Inland Revenue; Rowney & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

### Smith (Inspector of Taxes) *v.* York Race Committee.

Finlay, J. 20th December, 1933.

REVENUE—SCHED. B ASSESSMENT—RACECOURSE UNDERTAKING—PROFITS ASSESSED TO INCOME TAX UNDER SCHED. D—LAND NOT COVERED BY BUILDINGS ASSESSABLE UNDER SCHED. B—INCOME TAX ACT, 1918, SCHED. B, r. 1 (*b*).

This was an appeal by the Crown by case stated from a decision of the General Commissioners of Income Tax for the City of York.

The question was whether the proprietors of the York Racecourse were liable to be assessed as occupiers under Sched. B, in addition to the assessment on the profits of their business under Sched. D. At a meeting of the General Commissioners on the 4th March, 1932, the York Race Committee appealed against an assessment made on the committee under Sched. B of the Income Tax Act, 1918, for the year ending the 5th April, 1930, in respect of the occupation of lands, tenements and hereditaments on the Knavesmire, in the City of York. The committee had for many years carried on the trade of racecourse proprietors on the Knavesmire, and for the year ending the 5th April, 1930, were the occupiers of properties consisting of stands, stables, weighing-room, paddocks, lawns and enclosures, held under a lease granted by the York Corporation. The whole of those properties was enclosed and had an area of about 11 acres, of which about 3 acres were covered by buildings. The whole was occupied for the purpose of the committee's trade of racecourse proprietors, the profits of which had been charged to income tax under Sched. D. The amount of the Sched. B assessment was reserved, the appeal heard by the Commissioners being confined to the issue whether on the facts of the case any assessment at all under Sched. B was due to be made. The assessment which had been made was in respect of the annual value of the properties after exclusion therefrom of the stands, stables, weighing-room and other buildings, leaving only the paddocks, lawns and enclosures of a total area of about 8 acres. For the committee reference was made to the rules of Sched. B and particularly to proviso (*b*) of r. 1, which provided: "Tax under this Schedule shall be charged in addition to the tax to be charged under Schedule A on all the properties in this Act directed to be charged to the said tax according to the general rule of No. 1 of Schedule A. Provided that there shall not be charged under this Schedule . . . (*b*) any warehouse or other building occupied for the purpose of carrying on a trade or profession." It was contended by the committee that the exemption in favour of "any warehouse or other building occupied for the purpose of carrying on a trade or profession" covered not only the buildings themselves, but also the paddocks, lawns and enclosures in the same curtilage as the buildings, those adjuncts being essential to the committee's trade and the whole being used for the purpose of racing. It was contended for the Crown that that exception applied only to buildings and did not extend to the paddocks, lawns and enclosures. The Commissioners considered that the committee's contention was correct, and they discharged the assessment. The Crown now appealed.

FINLAY, J., said that he had arrived at the conclusion that the decision of the Commissioners could not be supported.

The question which arose was with regard to that part of the 11 acres which was not covered by buildings, and the question was whether the York Race Committee brought those things, the paddocks, lawns and enclosures, within the exemptions in proviso (*b*) to r. 1 of Sched. B. The first thing to ascertain was whether the Commissioners had correctly directed themselves in point of law. The contention that, if one found a building and also a lawn, the lawn being used, as the building was, for the purposes of the trade by those conducting the race meeting, both lawn and building fell within the exemption, could not possibly be right. The Commissioners had failed to observe that anything outside the four walls, if it was to come within the exemption, must be an adjunct to the building. The lawns and so forth could not possibly be regarded as adjuncts to the buildings. Appeal allowed, with costs, and the case remitted to the Commissioners to fix the amount of the assessment.

COUNSEL: *The Solicitor-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the Crown; *Latter*, K.C., and *J. H. Bowe*, for the respondents.

SOLICITORS: *Solicitor of Inland Revenue; Charles Russell & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division.

### In the Estate of Rosse, deceased.

Bateson, J. 6th November, 1933.

PROBATE—PARTIAL ADMINISTRATION—ADMINISTRATOR RESIDING OUTSIDE THE JURISDICTION—SPECIAL GRANT TO PERSON INTERESTED—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 164, sub-s. (1).

This was a motion for a grant of special administration under the Judicature (Consolidation) Act, 1925, s. 164, sub-s. (1), the personal representative being resident abroad. The deceased, Mrs. Edith Marion Rosse, died on 14th September, 1932, leaving an estate of the value of approximately £18,865. By her will, dated 19th August, 1932, she appointed John Maundy Gregory universal legatee and devisee, but without naming an executor. On 3rd October, 1932, John Maundy Gregory obtained letters of administration with the will annexed. On 23rd May, 1933, he was declared bankrupt; certain assets of the estate of the deceased remaining unadministered. Section 164, sub-s. (1), of the Act provides as follows: "If at the expiration of twelve months from the death of a person any personal representative of the deceased to whom a grant has been made is residing out of the jurisdiction of the High Court, the court may, on the application of any person or creditor interested in the estate of the deceased, grant to him in the prescribed form special administration of the estate of the deceased." It was submitted on behalf of the trustee in bankruptcy, who now moved for a special grant, that as John Maundy Gregory, the person to whom a grant of administration had been made, was outside the jurisdiction, and twelve months had elapsed since the death, the trustee was entitled.

BATESON, J., held that the application was within the terms of the section and directed that a grant should issue as prayed.

COUNSEL: *The Hon. Victor Russell* (with him *H. W. Barnard*), for the applicant.

SOLICITORS: *Isadore Goldman & Son.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

### Lynch *v.* Lynch.

Langton, J. 13th November, 1933.

DIVORCE—RESTITUTION OF CONJUGAL RIGHTS—PLEA OF JUST CAUSE—RESPONDENT HUSBAND'S EMPLOYMENT LIKELY TO BE JEOPARDISED BY RESUMPTION OF COHABITATION.

This was a wife's petition for restitution of conjugal rights. The respondent pleaded just cause of refusal. He alleged that the petitioner had made married life impossible by inordinate jealousy of women relatives which was entirely unfounded and violent outbreaks of temper accompanied by baseless accusations against other women in their circle of acquaintances, and that such conduct had jeopardised his employment. The facts appear sufficiently from the judgment.

LANGTON, J., in giving judgment, said that from 1928 the respondent carried on his avocation as a landscape gardener at an agricultural training centre which was in the main an educational concern. He left his wife in May, 1928, following disputes between them as to an alleged intimacy—it was not suggested of any immoral nature—with the wife of the managing director. The main grounds of the defence were that the petitioner was intolerably jealous and had caused scenes and troubles and given way to uncontrollable outbreaks of temper. A wife's giving way to a very strong temper and having a very jealous disposition were no reasons for a husband to break the marriage tie by separating himself from his wife. As stated by Lord Penzance in *Yeatman* v. *Yeatman* (1868), L.R. 1, P. and D. 487, the causes should be grave and weighty which should deprive a deserted wife of her remedy for that desertion. The petitioner impressed him (his lordship) as a person of absolute sincerity, but she was an utterly uncompromising person. She imagined that her husband was on too intimate terms with the wife of the managing director. The managing director ridiculed the idea and the petitioner was quite wrong in it. If he had proposed the respondent's dismissal to the board no doubt they would not have been long in so deciding. [His lordship here referred to an angry communication over the telephone from the petitioner to the managing director's wife as a result of which there had been a meeting of directors.] The position was that the respondent's employment was gravely jeopardised by the conduct of his wife. His employment was of a very special character and not easily or readily obtainable elsewhere. It had been stated that, if the petitioner returned to live with the respondent in the neighbourhood of the estate his employers would have to consider whether they would continue to employ him. He (his lordship) could not help feeling that there was no prospect of peace if the parties lived together again, and the petition would be dismissed, the wife being allowed her costs.

COUNSEL: *F. L. C. Hodson*, for the petitioner; *F. S. Lasky*, for the respondent.

SOLICITORS: *Vizard, Oldham, Crowder and Cash*, for *Windeatt and Windeatt*, Totnes; *Walter Crimp and Co.*, for *Almy and Thomas*, Torquay.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

## TABLE OF CASES previously reported in current volume.



## NEW STATUTES.

The following New Statutes, or parts of Statutes, came into force 1st January, 1934:—

Slaughter of Animals Act, 1933.
Summary Jurisdiction (Appeals) Act, 1933.
Blind Voters Act, 1933.
Road and Rail Traffic Act, 1933 (see "Current Topic," p. 18.)
Solicitors Act, 1933.
Service of Process (Justices) Act, 1933.
Rights of Way Act, 1932.
Finance Act, 1933 (7th Sched.).

## ERRATUM.—LOCAL GOVERNMENT ACT, 1933.

In the course of an article on the above-named Act in last week's issue, we erroneously informed our readers that the Act came into force on 1st January, 1934. This should have been 1st June, 1934, and we express our regret for the mistake.

# Rules and Orders.

THE SUMMARY JURISDICTION (MENTAL DEFICIENCY ACT) RULES, 1933. DATED DECEMBER 14, 1933.

1. *Procedure to determine place of residence.*]—Whenever a Court of Summary Jurisdiction has to determine the place of residence of a defective, it shall have the same powers as in the case of a complaint upon which an order can be made under the Summary Jurisdiction Acts, and the Summary Jurisdiction Acts shall apply to such proceedings accordingly.

2. *Application for transfer of liability.*]—The Petty Sessional Court to which a Council aggrieved by a decision as to the place of residence of any person, may apply for a transfer of the liability for the cost of the conveyance, reception and maintenance of such person shall, where the decision was given by a Judicial Authority or a Court of Summary Jurisdiction, be a Petty Sessional Court acting in and for the place in which the decision was given, and in the case of an order made by the Secretary of State, shall be a Petty Sessional Court having jurisdiction within the area of the aggrieved Council.

3. *Notice to Council before an order for determining place of residence or transfer of liability.*]—No order determining the place of residence of a defective or for the transfer of liability shall be made unless a summons has been served at least five days before the hearing thereof upon the Council which by virtue of the Order will be responsible for the cost of the conveyance, reception and maintenance of the defective.

4. *Forms.*]—The forms in Schedule A, or forms to the like effect, may be used with such variations as circumstances may require for the purposes of the Mental Deficiency Act, 1913.

5. *Citation and commencement.*]—These Rules may be cited as the Summary Jurisdiction (Mental Deficiency Act) Rules, 1933, and shall come into operation on the 30th day of December, 1933.

6. The Summary Jurisdiction (Mental Deficiency Act) Provisional Rules, 1914, which came into operation on the 20th March, 1914, shall continue in force till the 30th day of December, 1933, on which day they shall be superseded and replaced by these Rules.

Dated the 14th day of December, 1933.

*Sankey*, C.

SCHEDULE A.

I.

*Mental Deficiency Act*, 1913, *Section* 44 (1).

APPLICATION FOR ORDER DETERMINING PLACE OF RESIDENCE. COMPLAINT.

In the County of Petty-Sessional Division of
the day of One thousand nine hundred and
The complaint of A.B. (here set forth status of A.B.) who states that on the day of One thousand nine hundred and an order was made at the (Assizes) (Quarter Sessions) holden for ( ) (ordering C.D., a defective, to be sent to the Certified Institution at ) (appointing E.F. to be the Guardian of C.D., a defective) and specifying the County (Borough) of as the place of residence of the said C.D., and who claims that the County (Borough) of should be determined to be the place of residence of the said C.D.

Made before me Justice of the Peace for the (County) of this day of 19 .
(L.S.)

II.

*Mental Deficiency Act*, 1913, *Section* 44 (1).

ORDER ON APPLICATION FOR DETERMINATION OF PLACE OF RESIDENCE.

In the County of Petty-Sessional Division of .
Before the Court of Summary Jurisdiction sitting at
On the complaint of A.B. (here set out status of A.B.) it is adjudged that C.D., a defective, who at the (Assizes) (Quarter Sessions) holden at on the day of One thousand nine hundred and , was (ordered to be sent to the Certified Institution at ) (placed under the Guardianship of E.F.) resided in the (County) (County Borough) of .

Dated the day of 19 .
(L.S.) Justice of the Peace for the (County) of .

III.

*Mental Deficiency Act*, 1913, *Section* 44 (3).

APPLICATION FOR AN ORDER TRANSFERRING LIABILITY.

In the County of Petty-Sessional Division of .
The complaint of A.B. (an officer of )(authorised by) and on behalf of the Council of the (County) (Borough) of who states that on the day of One thousand nine hundred and an Order was made by directing that C.D., a defective, should be (sent to a Certified Institution) (placed under Guardianship) and specifying the (County) (Borough) of as the place in which the said C.D. resided, and who claims that the liability of the Council of the County (Borough) of should be transferred to the County (Borough) of .

Made before me

Justice of the Peace for the (County) of .
(L.S.) this day of , 19 .

IV.

*Mental Deficiency Act*, 1913, *Section* 44 (3).

ORDER ON AN APPLICATION FOR TRANSFER OF LIABILITY.

In the County of Petty-Sessional Division of .
Before the Petty-Sessional Court sitting at .
On the complaint of A.B. (here set out status of A.B.) it is adjudged that C.D., a defective, who on the day of One thousand nine hundred and was ordered to be (sent to an Institution) (placed under Guardianship), the County (Borough) of being specified in the Order as the place where the said C.D. resided, was resident in the County (Borough) of , and that the liability of the said Council of the County (Borough) of is accordingly transferred to the said Council of the County (Borough) of .

Dated the day of 19 .

(L.S.) Justice of the Peace for the (County) of

(L.S.) Justice of the Peace for the (County) of

# Societies.

## Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room on Tuesday, 9th January (Chairman, Mr. R. Langley Mitchell), the subject for debate was "That the salvation of the U.S.A. lies in the repeal of prohibition." Mr. P. H. North Lewis opened in the affirmative; Mr. J. F. Ginnett opened in the negative. The following also spoke: Messrs. M. Foulis, H. Peck, R. J. A. Temple, E. C. Durham, L. J. Frost, Miss H. M. Cross, Messrs. J. R. Campbell Carter, S. Terrell, E. W. Huddart, Miss F. W. Strange. The opener having replied, the motion was lost by five votes.

## London School of Economics.

(UNIVERSITY OF LONDON.)

Two Public Lectures entitled "Legislative Control of Contracts and the Application of the *Caveat emptor* in Commerce," will be given at the School by R. S. T. Chorley, M.A., Sir Ernest Cassel Professor of Commercial and Industrial Law in the University of London, Barrister-at-Law, on Tuesdays, 16th and 23rd January, at 5 p.m. Admission free without tickets.

# Legal Notes and News.

## Honours and Appointments.

The King has been pleased to approve the appointments of The Hon. Mr. Justice MAUGHAM, one of the Judges of His Majesty's High Court of Justice (Chancery Division), to be a Lord Justice of Appeal in the place of The Right Hon. Sir Paul Ogden Lawrence, who has resigned his appointment as Lord Justice; and of Mr. CHARLES STAFFORD CROSSMAN to be one of the Justices of the High Court of Justice (Chancery Division) in the place of Sir Frederic Maugham.

The Lord Chancellor has appointed Mr. JOHN HENRY LATHAM BREWER to be the Registrar of Holsworthy County Court, as from the 1st January.

The Lord Chancellor has appointed Mr. JAMES MATHEWS ELDRIDGE to be the Registrar of Oxford, Witney, Wantage and Wallingford County Court, as from the 1st January, also District Registrar of the High Court of Justice at Oxford.

Mr. R. STANLEY EVANS, Barrister-at-Law, Stipendiary Magistrate for the Pontypridd and Rhondda Division, has been appointed Vice-Chairman of the Glamorgan Quarter Sessions in succession to Lieut.-Colonel John I. D. Nicholl, of Merthyr Mawr, who has resigned.

Stafford Town Council have appointed Mr. THOMAS BROUGHTON NOWELL, solicitor, Deputy Town Clerk of Burton-on-Trent, as Town Clerk of the borough in succession to the late Mr. H. H. Battle. Mr. Nowell was admitted a solicitor in 1922.

## Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

## Wills and Bequests.

Mr. Ernest Roy Bird, M.P., solicitor, of Buckingham Gate, and of Brightling, left estate of the gross value of £39,230, with net personalty £33,891.

Mr. James Edward Wing, solicitor, of Sheffield, left £18,072, with net personalty £13,090.

Mr. William Sharp, solicitor, of Reigate, and of Lincoln's Inn, left £35,698, with net personalty £6,719.

Mr. Charles John Stubbs, solicitor, of Burston Hall, Staffs, left £20,720, with net personalty £9,708.

LEGAL AND GENERAL ASSURANCE SOCIETY LIMITED.

Mr. Romer Williams, D.L., J.P., has been re-elected Chairman of the Board of Directors for the ensuing year, and Mr. Ernest Edward Bird re-elected Vice-Chairman.

WINTER ASSIZES.

The following days and places have been fixed for holding the Winter Assizes, 1934 :—

OXFORD CIRCUIT.—Mr. Justice Finlay.—Thursday, 11th January, at Reading; Wednesday, 17th January, at Oxford; Saturday, 20th January, at Worcester; Thursday, 25th January, at Gloucester; Thursday, 1st February, at Monmouth; Wednesday, 7th February, at Hereford; Saturday, 10th February, at Shrewsbury; Saturday, 17th February, at Stafford.

NORTH WALES AND CHESTER CIRCUIT.—Mr. Justice Atkinson.—Monday, 15th January, at Welshpool; Thursday, 18th January, at Dolgelly; Monday, 22nd January, at Carnarvon; Friday, 26th January, at Beaumaris; Monday, 29th January, at Ruthin; Thursday, 1st February, at Mold. Mr. Justice Lawrence and Mr. Justice Atkinson.—Saturday, 3rd February, at Chester.

WESTERN CIRCUIT (1ST PORTION).—Mr. Justice MacKinnon.—Saturday, 13th January, at Devizes; Wednesday, 17th January, at Dorchester; Monday, 22nd January, at Taunton; Saturday, 27th January, at Bodmin.

NORTH EASTERN CIRCUIT.—Mr. Justice Du Parcq.—Wednesday, 7th February, at Newcastle; Thursday, 15th February, at Durham; Thursday, 22nd February, at York; Wednesday, 28th February, at Leeds.

NORTHERN CIRCUIT.—Mr. Justice Swift and Mr. Justice Macnaghten.—Friday, 19th January, at Carlisle; Wednesday, 24th January, at Lancaster; Monday, 29th January, at Liverpool; Monday, 26th February, at Manchester.

Note.—An Order under s. 77 of The Supreme Court of Judicature (Consolidation) Act, 1925, has been made directing that the business, if any, which if this Order were not made would be transacted at the Assizes at Appleby shall be transacted at the Assizes to be held at Carlisle.

SOUTH EASTERN CIRCUIT.—Mr. Justice Branson.—Thursday, 11th January, at Huntingdon; Saturday, 13th January, at Cambridge; Saturday, 20th January, at Ipswich; Saturday, 27th January, at Norwich; Saturday, 3rd February, at Chelmsford. Mr. Justice Roche.—Tuesday, 13th February, at Hertford; Saturday, 17th February, at Maidstone; Tuesday, 27th February, at Kingston-upon-Thames; Tuesday, 6th March, at Lewes.

MIDLAND CIRCUIT (1ST PORTION).—Mr. Justice Humphreys.—Friday, 12th January, at Aylesbury; Thursday, 18th January, at Bedford; Wednesday, 24th January, at Northampton; Wednesday, 31st January, at Leicester; Thursday, 8th February, at Oakham; Friday, 9th February, at Lincoln; Tuesday, 20th February, at Nottingham; Friday, 2nd March, at Derby.

# Court Papers.

## Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE. | | EMERGENCY ROTA. | APPEAL COURT No. 1. | GROUP I. MR. JUSTICE EVE. Witness. Part I. | GROUP I. MR. JUSTICE MAUGHAM. Non-Witness. |
|---|---|---|---|---|---|
| | | Mr. | Mr. | Mr. | Mr. |
| Jan. | 15 | Jones | More | *Ritchie | Andrews |
| ,, | 16 | Ritchie | Hicks Beach | *Andrews | More |
| ,, | 17 | Blaker | Andrews | *More | Ritchie |
| ,, | 18 | More | Jones | Ritchie | Andrews |
| ,, | 19 | Hicks Beach | Ritchie | *Andrews | More |
| ,, | 20 | Andrews | Blaker | More | Ritchie |
| | | GROUP I. MR. JUSTICE BENNETT. Witness. Part II. | MR. JUSTICE CLAUSON. Non-Witness. | GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II. | GROUP II. MR. JUSTICE FARWELL. Witness. Part I. |
| | | Mr. | Mr. | Mr. | Mr. |
| Jan. | 15 | More | Blaker | *Jones | *Hicks Beach |
| ,, | 16 | *Ritchie | Jones | Hicks Beach | *Blaker |
| ,, | 17 | Andrews | Hicks Beach | *Blaker | *Jones |
| ,, | 18 | *More | Blaker | Jones | *Hicks Beach |
| ,, | 19 | Ritchie | Jones | *Hicks Beach | Blaker |
| ,, | 20 | Andrews | Hicks Beach | Blaker | Jones |

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

### HILARY SITTINGS, 1934.

COURT OF APPEAL.

APPEAL COURT No. 1.

Thursday, 11th January.—Exparte Applications, Original Motions, Interlocutory Appeals from the Chancery and Probate and Divorce Division, and if necessary, Chancery Final Appeals.
Chancery Final Appeals will be continued until further notice.

APPEAL COURT No. II.

Thursday, 11th January.—Exparte Applications, Original motions, Interlocutory Appeals from the King's Bench Division and, if necessary, King's Bench Final Appeals.
King's Bench Final Appeals will be continued until further notice. The following Final Appeals are the first to be heard :—
Rigg v Holt
Dearden v C T Faulkner & Co Ltd
Steel v Bache
Holt v Walton
Brierley v Same
Markland v Manchester Corporation

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

GROUP I.

Before Mr. Justice EVE.

(The Witness List. Part I.)

(*Actions, the trial of which cannot reasonably be expected to exceed 10 hours.*)

Mondays .....Companies (Winding-up) Business.
Tuesdays .....
Wednesdays ..
Thursdays ....
Fridays..... } The Witness List. Part I.

Before Mr. Justice MAUGHAM.

(The Non-Witness List.)

Mondays .....Chamber Summonses.
Tuesdays .....Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses
Wednesdays ..Adjourned Summonses.
Thursdays ....Adjourned Summonses.
Lancashire Business will be taken on Thursdays, the 18th January, 1st and 15th February, and 1st and 15th March.
Fridays.....Motions and Adjourned Summonses.

Before Mr. Justice BENNETT.

(The Witness List. Part II.)

Mr. Justice BENNETT will sit daily for the disposal of the List of longer Witness Actions.

GROUP II.

Before Mr. Justice CLAUSON.

(The Non-Witness List.)

Mondays .....Chamber Summonses.
Tuesdays .....Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses
Wednesdays ..Adjourned Summonses.
Thursdays ....Adjourned Summonses.
Fridays.....Motions and Adjourned Summonses.

Before Mr. Justice LUXMOORE.

(The Witness List. Part II.)

Mr. Justice LUXMOORE will sit daily for the disposal of the List of longer Witness Actions.

Before Mr. Justice FARWELL.

(The Witness List. Part I.)

(*Actions, the trial of which cannot reasonably be expected to exceed 10 hours.*)

Mondays .....Bankruptcy business.
Tuesdays .....
Wednesdays ..
Thursdays ....
Fridays..... } The Witness List. Part I.

Bankruptcy Judgment Summonses will be taken on Mondays, the 15th January, 5th and 26th February and 19th March.
Bankruptcy Motions will be taken on Mondays, the 22nd January, 12th February and 5th March.
A Divisional Court in Bankruptcy will sit on Mondays the 29th January, 19th February and 12th March.

### THE COURT OF APPEAL.

A List of Appeals for hearing, entered up to Friday, 22nd December, 1933.

FROM THE CHANCERY DIVISION.

(Final List.)

Re Dove Molesworth v Bevan
Somerlite Ltd v Brown
Re Somerlite Ltd's Registered Trade Mark No. 520,004 Re Trade Marks Acts 1905-1919
The Warwickshire Coal Co Ltd v Coventry Corporation
Re Lund Smith v The Legal and General Assurance Society Ltd
Bale & Church Ltd v Sutton Parsons & Sutton
Ricardo v Rootes Ltd
Lambournes (B'ham) Ltd v Cascelloid Ltd Lambourne v Lambournes (B'ham) Ltd

(In Bankruptcy.)

*Pending 21st December* 1933.

Re a Judgment Debtor (No. 2062 of 1933) Exparte The Judgment Creditor v The Judgment Debtor
Re a Judgment Debtor (No. 2472 of 1933) Exparte The Judgment Debtor v The Judgment Creditor

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

FOR JUDGMENT.

Flower v Prechtel

FOR HEARING.

Rigg v Holt
Dearden v C T Faulkner & Co Ltd
Steel v Bache
The Association of Master Lightermen and Barge Owners (Port of London) v The Southern Railway Co
Tuppen v Watney
Re The Housing Acts 1925 and 1930 Re The London County Council (Ellen Street No. 1) Order 1932 Ellen Street Estates Ltd v The Minister of Health
Re The Housing Acts 1925 and 1930 Re The London County Council (Ellen Street No. 2) Order 1932 Ellen Street Estates Ltd v The Minister of Health
Holt v Walton Brierley v Same
Markland v Manchester Corporation
Flower v The Ebbw Vale Steel, Iron and Coal Co Ltd
Film Industries Ltd v Gaumont Ideal Ltd
Pattenden v Beney
Queen Anne's Bounty v Thorne
R Smith & Son v The Eagle Star and British Dominions Insurance Co Ltd
Sanderson v London Passenger Transport Board
Same v Same
Drake v Dibben
Same v Same
Horton v Bowman
Start v W Turner (Ardwick) Ltd
Parkfield Trust Ltd v Curtis
Pritchard v Greyhound Racing Association Ltd
Ford v Hill
Pushman Brothers Inc v British India Steam Navigation Co Ltd
Phelps Stein Co Inc v Cohen
Turner v Simcox
Johnson v Gillies
Staines v The Union Bank of Manchester Ltd
Re Housing Act 1930 Johnson v Leicester Corporation
Re Same Same v Same
The Mechanical and General Inventions Co Ltd v Austin
Hook v Harris
Bain v Thorne & Co Ltd
T A Kerr & Sons v Cohen
Utton v Fenwick
Fitz-Gerald v Simmonds
Purkis v Walthamstow Borough Council
Same v Same
Croft v Smiths Meters Ltd.
Rogers v Standard Bank of South Africa Ltd
Hylton v The Gramophone Co Ltd
Same v Same
Little v The North Riding of Yorkshire County Council
Thomas Crapper & Co Ltd v Salter
Andrea Sanguineti Fu Davide of Genoa v Ugleexport of Moscow
Curle v Cameron-Rose
D Badcock Ltd v London County Council
Bird v Broadbent
Dodgson v Dunlop Rubber Co Ltd
Same v Same
De Manin v Swaffield
Foley v Classique Coaches Ltd
Cohen v National Provincial Bank Ltd

(Revenue Paper—Final List.)

Attorney-General v Lloyds Bank Ltd

(Interlocutory List.)

Mosley v Daily News Ltd
Same v Same
Same v Same
Frederick Huth & Co v White
Same v Same
Rudd v Hooker

RE THE WORKMEN'S COMPENSATION ACTS.

(From County Courts.)

Talbot v Ackers Whitley and Abram Coal Co Ltd
Gaskell v St Helens Collieries Co Ltd
Britton v Leversons Wallsend Collieries Ltd
Pearson v John Walton of Collyhurst Ltd
Williams v B & B G Collieries Ltd
Vickers v Cumberland Coal Owners Mutual Indemnity Co Ltd
Collins v British Timkin Ltd
Lewis & Towers Ltd v Sembliz

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## HIGH COURT OF JUSTICE—CHANCERY DIVISION.

There are Three Lists of Chancery Causes and matters for hearing in Court. (I) Adjourned Summonses and Non-Witness actions; (II) Witness Actions Part I (*the trial of which cannot reasonably be expected to exceed* 10 *hours*) and (III) Witness Actions Part II; every proceeding being entered in these lists without distinction as to the Judge to whom the proceeding is assigned. During the Sittings there will usually be two Judges taking each of these lists and warning will be given of proceedings next to be heard before each Judge. Applications in regard to a "warned" matter should be made to the Judge before whom it is "warned."

Applications in regard to a proceeding which has not been "warned," should usually be made to the senior of the two Judges taking the list in which the proceeding stands.

Motions, Short Causes, Petitions and Further Considerations will be taken by that one of the Judges taking the Non-Witness List who belongs to the group to which the proceeding is assigned.

GROUP I.—Mr. Justice EVE, Mr. Justice MAUGHAM and Mr. Justice BENNETT.

GROUP II.—Mr. Justice CLAUSON, Mr. Justice LUXMOORE and Mr. Justice FARWELL.

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## HILARY SITTINGS, 1934.

The Adjourned Summons and Non-Witness List will be taken by Mr. Justice CLAUSON and Mr. Justice MAUGHAM.

The Witness List Part I will be taken by Mr. Justice EVE and Mr. Justice FARWELL.

The Witness List Part II will be taken by Mr. Justice LUXMOORE and Mr. Justice BENNETT.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group I will be heard by Mr. Justice MAUGHAM.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group II will be heard by Mr. Justice CLAUSON.

Companies (Winding up) Liverpool and Manchester District Registries and Bankruptcy business will be taken as announced in the Hilary Sittings Paper.

Mr. Justice EVE and Mr. Justice FARWELL.

Witness List. Part I.

*Actions, the trial of which cannot reasonably be expected to exceed* 10 *hours.*

Before Mr. Justice EVE.

Retained Adjourned Summons.

Re Ernest's Settlement Cropton v Corfield (pt hd)

Companies Court.

Petitions.

Alliance Bank of Simla Ltd (to wind up—ordered on Dec 21, 1931, to s.o. generally—liberty to restore)
Dwa Plantations Ltd (same—s.o. from Nov 6, 1933, to April 23, 1934)
Britivox Ltd (same—ordered on Nov 16, 1931, to s.o. until action disposed of—liberty to restore)
Herbert Nicholls Ltd (same—s.o. from June 27, 1932, to April 30, 1934)
London Clinic and Nursing Home Ltd (same—ordered on May 8, 1933, to s.o. generally—liberty to apply to restore)
Darlington Rustless Steel & Iron Co Ltd (same—ordered on Dec 18, 1933, to s.o.—liberty to restore)
James Davies & Co Ltd (same—s.o. from Dec 4, 1933, to Jan 15, 1934)
B A Manufacturing Co Ltd (same—s.o. from Dec 11, 1933, to Jan 15, 1934)
Textile Import Co Ltd (same—s.o. from Dec 18, 1933, to Jan 15, 1934)
Australian Commonwealth Fuels and Oils Ltd (same—s.o. from Nov 27, 1933, to Jan 15, 1934)
Joseph Kimber & Co Ltd (same—s.o. from Dec 18, 1933, to Jan 15, 1934)
Eustace Miles Foods (1921) Ltd (same—s.o. from Dec. 18, 1933, to Jan 15, 1934)
Surgical Manufacturing Co Ltd (same—s.o. from Dec 18, 1933, to Jan 15, 1934)
Wood & Co (Brixton) Ltd (to wind up)
Arnold & Co (Sales) Ltd (same)
British Clarion Co Ltd (same)
Wholesale Stationery Supplies Ltd (same)
E R Air & Co Ltd (same)
Fylde Hotels and Restaurants Ltd (same)
Newport County Supply Stores Ltd (same)
Stanberts Ltd (same)
Boyds Pharmacy Ltd (same)
L Pignataro Ltd (same)
Anglo International Holdings Ltd (same)
John Stafford Ltd (same)
Southampton Casino Ltd (same)
Hanover Trust Ltd (same)
Victoria Laundry (Child's Hill) Ltd (same)
Metropolitan Opera Co (London) Ltd (same)
Charles Boyton & Son Ltd (same)
National Insurance & Guarantee Corporation Ltd (same)
Silver Bullet Speedcraft Ltd (same)
Joyboy Razor Co Ltd (same)
Bennetts (London) Ltd (same)
Curries Construction Co Ltd (same)
Cail's Bitmo Co Ltd (same)
Paul Ruinart (England Ltd) (to confirm reduction of capital)
British Woollen Cloth Manufacturing Co Ltd (to confirm reduction of capital—ordered on Dec 8, 1930, to s.o. generally—liberty to restore)
Charles Brown & Co Ltd (to confirm reduction of capital)
Commercial and Agency Co of Egypt Ltd (to confirm reduction of capital)
Lamlok Ltd (to confirm reduction of capital)
H Andrew & Co Ltd (to confirm reduction of capital)
Berkeley Property and Investment Co Ltd (to confirm reduction of capital)
New Callao Gold Mining Co Ltd (to confirm reduction of capital—ordered on Nov 27, 1933, to s.o. generally—liberty to restore)
H Beare & Sons Ltd (to confirm reduction of capital)
J McCandlish Ltd (to confirm reduction of capital)
Northern Victory Theatres Ltd (to confirm reduction of capital)
Electrical Apparatus Co Ltd (to confirm reduction of capital)
Orbit Traversing Fan Co Ltd (to confirm reduction of capital)

Furlongs Ltd (to confirm reduction of capital)
Ruths International Accumulators Ltd (to confirm reduction of capital)
Wyles Brothers Ltd (to confirm reduction of capital)
J M Perry & Co Ltd (to confirm reduction of capital)
Turk Smith & Co Ltd (to confirm reduction of capital—ordered on Dec 19, 1933, to s.o. generally—liberty to restore)
United Kingdom Tobacco Co (1929) Ltd (to confirm reduction of capital)
Ellis Brothers Ltd (to confirm reduction of capital)
Bradbury Son & Co (1920) Ltd (to confirm reduction of capital)
Madison (England) Ltd (to confirm reduction of capital)
Tyrrell & Green Ltd (to confirm reduction of capital)
Bradford Manufacturing Co Ltd (to confirm reduction of capital)
United Molasses Co Ltd (to confirm reduction of capital)
Berrick Bros Ltd (to confirm reduction of capital)
Gresham Street Warehouse Co Ltd (to confirm alteration of objects)
Hairdressers' Wholesalers' Association Ltd (to confirm alteration of objects)
Institution of Production Engineers (to confirm alteration of objects)
Slate Slab Products Ltd (to sanction scheme of arrangement—ordered on Oct 13, 1931, to s.o. generally—liberty to restore)
Dorricotts Ltd (to sanction scheme of arrangement)
Sound Equipment Ltd (to sanction scheme of arrangement)
Colchester Brewing Co Ltd (sec 155)
Queen's Club Garden Estates Ltd (sec 155)
Western Mansions Ltd (sec 155)
Metallic Seamless Tube Co Ltd (sec 155)
Chesterfield Tube Co Ltd (sec 155)
British Italian Banking Corporation Ltd (sec 155)
E W Rudd Ltd (to confirm reorganisation of capital)
Spaull Sons & Co (India) Ltd (to restore name to register)
Kepston Ltd (to stay winding up and confirm reduction of capital)
Priestman Collieries Ltd (to sanction scheme of arrangement and confirm reduction of capital)

Motions.

Trent Mining Co Ltd (ordered on July 31, 1931, to s.o. generally—liberty to restore—retained by Mr Justice Maugham)
Braceborough Spa Ltd

Adjourned Summonses.

City Equitable Fire Insce Co Ltd (Application of Liverpool and London and Globe Insce Co Ltd (ordered on April 8, 1930, to s.o. generally—liberty to restore—retained by Mr Justice Maugham)
Orchosol Sound Reproduction Ltd (Application of T Froude—with witnesses—ordered on Nov 11, 1932, to s.o. generally)
Marina Theatre Ltd (Application of F H Cooper—with witnesses—ordered on May 10, 1933, to s.o. generally—liberty to apply to restore)
W Smith (Antiques) Ltd (Application of Liquidator—with witnesses—ordered on Dec 8, 1932, to s.o. generally)
Fordhams' Trust Ltd (Application of Automatic Records Player Ltd—with witnesses)
L Bauer & Son Ltd (Application of Jewish Colonial Trust (Juedische Colonialbank) Ltd—with witnesses)
Wise & Lansdell Ltd (Application of W J Lansdell—ordered on Dec 8, 1933, to s.o. generally)
Metduro Ltd (Application of Liquidator—with witnesses)
Same (Application of Winchester Trust and Agency Ltd—with witnesses)
C H Hinton & Co Ltd (Application of Liquidator—with witnesses)
R Ritterband & Suckling Ltd (Application of Liquidator—with witnesses)
Whitehaven Colliery Co Ltd (Application of Liquidator)
Great Orme Tramways Co (Application of R W Beesley)
Russo Asiatic Bank (Application of H M Attorney-General—with witnesses)
Lydenburg Proprietary Mines Ltd (Application of F G E Elston—with witnesses)
Russian Bank for Foreign Trade (Application of H M Attorney-General)

Before Mr. Justice FARWELL.

## CHANCERY DIVISION.

Retained Matters.

Witness List. Part II.

The English Sewing Cotton Co Ltd v The Derwent Valley Water Board

Adjourned Summonses.

Re Boyer Neathercoat v Lawrence (pt hd)
Re Clements Public Trustee v Jones
Re The National Old Age Pensions Trust Stevens v Taverner (pt hd)
Re Bird Dobson v Smith (pt hd)
Re Roberts Kimberley v Maxwell (pt hd)

Mr. Justice EVE and Mr. Justice FARWELL.

Witness List. Part I.

Re Galloway's Settlement Galloway v Galloway
Graham v Pemberton
Re Dean's Settlement Dean v Briggs (s.o. to Jan 12, 1934)
Sutcliffe v Keith
Harrison v Imperialads Ltd
Townend v Askern Coal & Iron Co Ltd
Daw v Daw
Re Crowne Davis v Crowne
Re King King v Ferber (with witnesses—not before Feb 1, 1934)
C C Wakefield & Co Ltd v Purser
Aldrington-on-Sea Estates Ltd v Baxter
Savework Ltd v "Hygena" Cabinets Co Ltd
Pearl Assurance Co Ltd v Fox
Armstrong v Forward
Trafalgar Insurance Co Ltd v Earle
Ravenscroft v Brown (fixed for Jan. 11, 1934)
Chipper v Suter
Ward v Ritchie
Kelly's Directories Ltd v The Wembley Press
Hucklesby v Parker
Montagu-Stuart-Wortley v Worsley
Whatsley v Cohen
Bates v Crockford Ltd
Percival v Jordan
Re General Equipment Ltd Re Companies Act 1929
Re Sharples Evans v Cartmell
Jowsey v Batram
Westminster Bank Ltd v Denville
Re Taylor Taylor v Taylor
Public Trustee v G G & F Syndicate Ltd
Allnatt Ltd v Bennett
Alton-Nagel v Perkins
Re Whiteley Payter v Whiteley
Matthews v Milne
Baader v Rowton
Manor Gown Co Ltd v Soning
Jenkins v Edwards
Currys Ltd v Dawson
American Dental Co Ltd v Eden
Parkinson v Peacock
Re Barningham's Settlement Adler v Zerkowitz
Noble v Swatridge
Williams v National Provincial Bank Ltd
H Higins & Co Ltd v Skeggs
Symons v Allwork
Attorney-General v Racecourse Betting Control Board
Wyllie v Banus
Joseph v Kleyman
George v George
Phillips v Davis
Erskine v Erskine
Wm Freer Ltd v Uglow
Tootal v Feldman
Re Haco Dental Co Ltd Hagedorn v The Company
Chappell & Co Ltd v D C Thompson & Co Ltd
Minter v Minter
Ever-Ready Razor Products Ltd v The Ever-Ready Perfumery Co.
Pope v Davison
Bevan v Taylor
Re Marchant Chandley v Marchant
Toulmin v Public Trustee
Philpotts v Skillings
Church's Trustees v Robinett
Joan Ltd v Elias
Hurst v N Donner Ltd
Re Elder Dempster & Co Ltd Premier Investment Co Ltd v The Company
Sheffield v Westcott
Re Lesquendieu's Trade Marks Re Trade Marks Acts, 1905-1919
Gissin v Liverpool Corporation
Walley v Bradbury
Andersen v Lloyds Bank Ltd
Re Church Church v Church
Re Cohen's Application Mathieson v Thornton
Davis v Symons
Middleton v The Aylesbury Wine Co Ltd (Robinson, 3rd Party)
Rothwell v Robinson
Re Rathbone Estates Ltd Re Companies Act, 1929
Payne v Pettifer
Solomon v T Swift & Son
Hawkes & Son (London) Ltd v Paramount Film Service Ltd
Litenstone v Sacks
Wyllie v Grimsdale
Meynell v Stapylton
Nye v Trehearne
Dale v Clark
Viney v Theyer
Smallwood v National Provincial Bank Ltd
Re Epps Midland Bank Executor and Trustee Co Ltd v Epps
Koppenhagen v Pool's Advertising Service Ltd
Re Solicitors Re Taxation of Costs

Mr. Justice CLAUSON and Mr. Mustice MAUGHAM.

Adjourned Summonses and Non-Witness List.

Before Mr. Justice CLAUSON.

Further Consideration.

Re Shaw Pearson v Radcliffe

Mr. Justice CLAUSON and Mr. Justice MAUGHAM.

Adjourned Summonses and Non-Witness List.

North Riding of Yorkshire County Council v The London and North Eastern Railway Co
Re Corney Pentreath v Corney (not before Jan 31)
Re Baker Steadman v Dicksee
Re Edwards Nichols v Edwards
Re Shee Taylor v Stoger
Re Cope Hale v Hale
Re Connorton Saw v Connorton
Re Dunn Dunn v Welch
Re Mullins Monk v Mullins
Re Pemberton Pemberton v Pemberton
Re Freeman Tingle v Freeman
Re Payton Murphy v Russell
Re Lewis Reid v Beaumont
Re Jewsbury Barnett v Goodman
Re Gower's Settlement Re Trustee Act, 1925
Re Russell's Agreement Fell v Russell
Re Maidment Crow v Maidment
Re Carden Metcalfe v Duprez
Re Gudgeon Public Trustee v Gudgeon
Re Deacon Lloyds Bank Ltd v Deacon
Re Ricarde-Seaver Midland Bank Executor and Trustee Co Ltd v The Eugenics Society
Re Refray Refray v Refray
Re Parsons' Agreement Trusts Bedford v Thompson,
Re Hancock Ross v Rawson
Re Turner's Settlement Turner v Jago
Re Coal Mines Act, 1930 Dorman Long & Co Ltd v The Executive Board under the Durham District (Coal Mines) Scheme, 1930
Re Lucas Hughes-Hallett v Lloyds Bank Ltd
Re Harvey Kerridge v Brett
Re Gowenlock Public Trustee v Gowenlock
Re Edwards Corfield v Edwards
Re Dorman Long & Co Ltd Flawn v The Company
Re Banks Holmes v Smith
Re Shoveller Langley v Langley
Re Gale Gale v Gale
Re Hawkins Hawkins v Mounty
Re Usherwood Lane v Theoff
Re Cuming Cuming v Woodnutt
Re Seager Merrett v Lloyd
Re Ives Clarke v Calver
Re Elmslie Elmslie v Elmslie
Re Todd Butler v Westminster Bank Ltd
Re Sutherland's Settlement Sutherland v Sutherland
Re Jenkins Davies v Harries
Re Harrison Public Trustee v Best
Re Macaulay's Settlement O'Donnell v Public Trustee
Re Borwick Borwick v Borwick
Re Hunt Gaston v Pearson

Re Arden-Close Close v Courthope
Re Douglas Motors (1932) Ltd D Estates Ltd v The Company
Re Bewicke-Copley's Settlement Cromwell v Cocks
Re Richardson Smith v Sinker
O'Reilly v The Prudential Assurance Co. Ltd

Mr. Justice LUXMOORE and Mr. Justice BENNETT.

Witness List. Part II.

Before Mr. Justice LUXMOORE.

For Judgment.

Assigned Petition.

Re Thomson's Letters Patent No. 304372 Re Patents and Designs Acts, 1907-1932

For Hearing.

Retained Adjourned Summons.

Re The Colonial Bishoprics Fund Re The Charitable Trusts Acts, 1853-1925 (fixed for Jan. 11, 1934)
Re Galinski Cohen v Galinski
Re Petition of Right of Liverpool Corporation (not before Easter)
L G Automatic Services Ltd v T B Brown Ltd (s.o. for security)
Re Pharmaceutical Corporation Ltd Blackburn v The Company
Re Farmer Abbott v Farmer
Re Chowne's Settlement Chowne v Chowne
Re Same Same v Same
Hollandsche Maatschappij Voor Gecondenseerde Melk N.V. (The Condensed Milk Company of Holland) v Distributors Ltd
Ilbert v Ilbert (not before Jan. 15)
Re Chandler's Settlement Illingworth v Harrison
Hunter v Hunter
Same v Same
J W & T Connolly Ltd v Imperator Hestesko A.S.
Re Vulcan Copper Mines Ltd. Re Companies Act, 1929
Re Rhodesia Border Mining Corporation Re Companies Act, 1929
Ellis v Greenleaf
Upcher v Clarke
Pritchard v Grainger
British United Shoe Machinery Co Ltd v Isaacson
Stringer v Stringer
Re Cave Bridge v Haywood
Childs v Charke
Attorney-General v Eastbourne Corporation
Mitchell v West's Gas Improvement Co Ltd
Shashoua v Shashoua
Re Parent Trust and Finance Co Ltd Re Companies Act, 1929
Bromley's Trustee v Kemsleys (Bromley and ors, Claimants) (not before Feb. 22)
Re Jacobs Williams v Jacobs
Morny Ltd v Hales
Perrott v Simpson
Pittman v Wood
Raynor v Sherwood Colliery Co Ltd
Blake v Taylor
Re Stokers Ltd Re Companies Act, 1929
Idell v Potter
Re Neilson McTurk v Croney
Shropshire Iron Co Ltd v Oakengates Urban District Council
Westcliff-on-Sea Motor Services Ltd v Bridge
Re Patents and Designs Acts, 1907 to 1932 Re C Birnbaum Ltd's Registered Design No. 750392
Re Griffiths (Building Contractors) Ltd Re Companies Act, 1929
Green v Hodges
Re Walton Austin v Norris
C Birnbaum Ltd v Levine & Son
Speed Gears Ltd v Hambro
Thomas v Thomas
Goodenday v New Zealand Sulphur Co Ltd
Owen's Trustee v Johnston
B Borst Ltd v Borst
Yates v Lukies
Attorney-General v Aman
Darby v Bowyer
Joyce v Goddard
Re British and Foreign Films Ltd Re The Companies Act, 1929
Tecalemit Ltd v C C Wakefield & Co Ltd
Goffin v Moody
Corporation of London v Lyons, Son & Co (Fruit Brokers) Ltd
Barlow v Wild
Williams v Buckley
W Wood & Son Ltd v The Power Construction Co Ltd
Whitaker v The Londesborough Theatre and Picture House (Scarborough) Ltd (restored)
Tecalemit Ltd v Burt
Re Turnor Turnor v Turnor
Bounevialle v Rapoport
Waring v Eyre
Stephenson v Chappell & Co Ltd
Smith v Blakeney Hotel Ltd
Godalming Corporation v The Mid Southern District Utility Co
Garrison v Walker
Smith v Gray
Emms v Hannent
Porter v Belsey
Macan v Gadsden
Brickman v Hirsch
Tudor-Hart v British Union for the Abolition of Vivisection
MacGregor v Same
Hunter v Churchill
Lloyd v Robert Johnson & Co Ltd
Aldred v Shaw
King v Debenham
Re Allen Craig & Co (London) Ltd Re Companies Act, 1929
Buckland v Buckland
Forde v The National League of the Blind of Great Britain and Ireland
Re Trusts of Property at North Wingfield, Derby Tomlinson v Tomlinson
Dowell v Heath
Jobson v Jobson
Kerman v The New Zealand Sulphur Co Ltd
Egyptian House Properties v Maynards Ltd
Signal Trust Ltd v Steel Industries of Great Britain Ltd
de Carouso v Blantyre-Gowlland
Mackenzie v Smith
The Plaza (Mansfield) Ltd v Taylor
The General Electric Co Ltd v Warners Electrical Trust Ltd
Engert v Engert and Rolfe Ltd
The Commissioners of the Scarborough Harbour Act v Whitehead
Siggins v Mousley
Manbre & Garton Ltd v George Clark & Son Ltd
Chepco Ltd v Whitehead
Lockwood & Elliott v W & J Cardwell Ltd
Leach v Leach
Re The Hackney Furnishing Co Ltd Credit Finance Co Ltd v The Company
T C Palmer Ltd v Wood
International Broadcasting Co Ltd v The Sunday Referee Publishing Co Ltd
F H Drabble & Sons Ltd v The Derwent Valley Water Board

## CHANCERY DIVISION.

### APPEALS AND MOTIONS IN BANKRUPTCY.

Pending 21st December, 1933.

APPEALS from County Courts to be heard by a DIVISIONAL COURT sitting in Bankruptcy.

Re Brinson, H N, Dixon, W G and Wall, W Exparte Harold Neilson Brinson v The Official Receiver

MOTIONS IN BANKRUPTCY for hearing before the Judge.

Re Bartlett, K E Exparte Edith Markham (married woman) v The Trustee
Re Gibbons, Sir Walter Exparte Burton and Ramsden v The Trustee
Re Woolf, J H Exparte Mann Crossman and Paulin Ltd v The Trustee
Re Cohen and Assael Exparte The Trustee v Percy Phillips
Re Massada, I Exparte Israel Massada and Sheila Massada (an Infant)
Re Potts, W T Exparte Etablissements Callot and de Schrijver v Leonard Tubbs & Co and The Official Receiver

## KING'S BENCH DIVISION.

CROWN PAPER—For argument.

The King v Assessment Committee for the Borough of Shoreditch (exparte S Hanson and Son Ltd)
The King v Gen Commrs for Income Tax for West Bucklow (exparte Puritan Tanneries Ltd)
Sherwen and anr v Ullcoats Mining Co Ltd
FitzPatrick v Dixon Bate
The King v Sir A C Thornhill and ors Jjs of Suffolk and anr (exparte Swaby)
Huggett v Help Yourself Stores Ltd
Holder v Gunning and anr
Thomas v Morgan
Council of the County Borough of Birkenhead v Council of the County of Lancaster
Evans v Red and White Services Ltd
Birkenhead and District Co-operative Soc v Rating Authority for Birkenhead
Mayor, etc of Stockton-on-Tees v Carter and anr
John Mowlem & Co Ltd v Lane
Jones v Jones
Ager v Gates
Eastern Counties Omnibus Co Ltd v Goad
The King v R W H Woodburne Esq and ors Jjs of Lancashire and ors (exparte Commrs of Customs and Excise)
The King v J Hay Halkett Esq and anr (exparte Smith)
The King v Col E B Jones and ors Jj of Caernarvon and anr (exparte Morris)
Mizen v Old Florida Ltd
Egan v Mizen
Webb v Maidstone and District Motor Services Ltd
Ashley v Fisher
Bausor v Mayor etc of Coventry
Stone v Fletcher
Woodford v Ramsden
Pettit v Woodlock and ors
Curry v Crowhurst
Metcalfe v Assessment Committee for Ryedale Assessment Area
The King v J House Esq and ors Jjs for Lancaster (exparte Wigan Industrial Burial Society)
Shadbolt v Esher Development Co Ltd
Lipton Ltd v Assessment Committee of the Borough of Shoreditch
In the matter of a decision of H W McGrath Esq
Same v Same
The King v T R Wood Esq and ors Jjs for Stafford (exparte Micklewright)
The King v Same (exparte Lester)
Tattam v Moss
Roche v Willis
Jones v Rhyl Amusements Ltd
Cave v Dudley Co-operative Soc Ltd
Crawford v British Extracting Co Ltd
Hall v Oskotsky
Worcestershire County Council v Warwickshire County Council
Fred Robinson (Transporters) Ltd v Robinson
Watson v Robinson
Fred Robinson (Transporters) Ltd v Same
Stanaway v Melville
Same v Same
Rawlings v Wheeler
Whittaker v Trimdon Motor Services Ltd and anr
The King v J P Rudolf Esq and ors (exparte Liverpool Corporation)
The King v The Recorder for the County Borough of Burnley (exparte Monsdale)

CIVIL PAPER—For Hearing.

Phillips v Copping
Medlock v McDonald (Mayor's and City of London Court)
Portheawl Recreations Ltd v Atkinson and wife (Bridgend County Court)
Portheawl Recreations Ltd v Brinkley and ors (Bridgend County Court)
Wrangham v Bodie
Birck Bros Ltd v Barnes (Wandsworth County Court)
Wells v Goodman (Kingston County Court)
In re Solicitors
Shrank v Lewis and ors (Shoreditch County Court)
Ellis and anr v Horn (Great Grimsby County Court)
Bowring v Manor Motor Co Ltd (West London County Court)
Hathern Industrial Co-operative Society Ltd v Beckett (Loughborough County Court)
Bedwas Navigation Colliery Co (1921) Ltd v The Executive Board
Bramham & Gale v Lupton (Leeds County Court)
Morris and anr v Skinner (Lambeth County Court)
Davies v Mayor etc of Huddersfield (Huddersfield County Court)
Philip Pariser & Son v Samuels (Blumstein, claimant)
Universal Pictures Ltd v Bryson
Maslin v Green (Shoreditch County Court)
Oil Products Trading Co Ltd v Soc Anon Soc De Gestion D'Enterprises Coloniales
Hodsons Ltd v Mayor etc of Nottingham
Oliffe v Hemus (Northleach County Court)
Heaven v Lewis (Pontypool County Court)
Knightsbridge Properties Ltd v Bowie (Westminster County Court)
Exors of A S Brittain v Harrison (Rotherham County Court)

Simpson v Tanner (Greenwich County Court)
Fillingham v Pocklington (Marylebone County Court)
British and Colonial Furniture Co Ltd v Laycock (Halifax County Court)
Howell v Lester (Westminster County Court)
Ward and anr v Winsor
F C Gooch & Son (Execution Creditor) v Camelo (Deft and Judgt Debtor, M A Camelo (Claimant) (Whitechapel County Court)
George Beer and Rigden Ltd v Whale and ors (Greenwich County Court)
Harley v Renant (Westminster County Court)
Brown Bros v Anderson H R (Anderson W J, claimant) (St. Albans County Court)
Budden v Same (same)
Whiteman Smith Motor Co Ltd v Chaplin and anr (Bloomsbury County Court)
Barkers & Lee Smith Ltd v Baker (Kingston-upon-Hull County Court)
Blay v Pocock (Windsor County Court)
Bocarro v Mirchandini (Southwark County Court)
Mikhail v Cole (Westminster County Court)
Leiserach v Schalit
Hall v Powell (Torquay County Court)
Sackville v Constable Hart & Co Ltd (Thrapston County Court)
L'Estrange v F Graucob Ltd (Llandudno County Court)
Alberts & Sons Ltd v Locke (Colchester Clacton and Halstead County Court)
Schalit v Leiserach
George Ewer & Co Ltd v Eagle Star and British Dominions Insce Co Ltd
Grundy and anr v Newton (Derby County Court)
Browne v Levenberg (Whitechapel County Court)
Adaway v London Wholesale Dairies Ltd and anr (Brentford County Court)
Shinner v Noble (Southend County Court)
Cole Dickin & Hills v Surfacings Ltd (Mayor's and City of London Court)
Readhead v Black (West London (Brompton) County Court)
Warren Estates Ltd v Dixon (Winchester County Court)
Tellus Super Vacuum Cleaner Co Ltd v Evans (Middlesex County Court)
Scott v Sowler and anr (Westminster County Court)
Sandfield and anr v Mayor etc of Barnes (Wandsworth County Court)
Wood v Rushton (Tamworth County Court)
Sunderland Mantle and Gown Co Ltd v Yam (Sunderland County Court)
Tibbs v Tibbs (Harrogate County Court)
Chance and anr (Judgment Creditors) v Thacker (Judgment Debtor) Franklin (Garnishee)
Thrush v Atchley and anr (Bristol County Court)
Jones v Joseph (Manchester County Court)
Da Costa v Jackson (Bow County Court)
Red and White Services Ltd v Harse (Merthyr Tydfil County Court)
Carroll v Crampton (Nottingham County Court)
Salter v Hoyland
Mathews v Amalgamated Anthracite Collieries Ltd (Llanelly County Court)
Emmerson v G Walker & Slater Ltd (Bow County Court)
Brown v Parkes (Newton Abbott County Court)
Chamberlain and Willows v Davis (Mayor's and City of London Court)
Keighley and Anr v William Rogerson & Co Ltd and anr
Midland Carpet Co v Jones (Cardiff and Barry County Court)
Lines v C & E Morton Ltd (Bow County Court)
Queen Anne's Bounty v Exors of William Blacklocks (Ashford County Court)
Wallis v Biddell and anr
Tellus Super Vacuum Cleaner Co Ltd v Egan (Westminster County Court)
Curtis and wife v E J Jones (Liverpool-London) Ltd (Clerkenwell County Court)
Wiseburgh v Porter & Co (Mayor's and City of London Court)
Kearns v Bedford (St Albans County Court)
Nielsen v Russell (Brighton County Court)
Reynolds v Oaklands Estates Ltd (Wandsworth County Court)
Hartley v Jarvis (Lambeth County Court)
Portman v Same (Lambeth County Court)
Rogers v Same (Lambeth County Court)
Robinson v Lake (Dartford County Court)
William McLean & Sons v McLean (Liverpool County Court)

APPEALS UNDER UNEMPLOYMENT INSURANCE ACT, 1920.

Appeal by League of Remembrance (1914-1919) re Ruth Hewer
Appeal by British Provident Association for Hospital and Additional Services re Edith Wilson

REVENUE PAPER.—Cases stated.

T Haythornthwaite & Sons Ltd and T Kelly (H.M. Inspector of Taxes)
G W Selby Lowndes and The Commrs of Inland Revenue
Compagnie Air Union and R B Wilson (H.M. Inspector of Taxes)
A T V Wareham and A A Wyllie (H.M. Inspector of Taxes)
Sir James B Henderson and B Archer (H.M. Inspector of Taxes)
Rye & Eyre and Commissioners of Inland Revenue
The Commissioners of Church Temporalities in Wales and E V K Bryant (H.M. Inspector of Taxes)
G J Craddock (H.M. Inspector of Taxes) and H J V Greenwood
J R Bonner (H.M. Inspector of Taxes) and Andrew Frood
A E K Cull and W B Cowcher (H.M. Inspector of Taxes)
A J Weight (H.M. Inspector of Taxes) and Harry Salmon
E G Oliver and N Chuter (H.M. Inspector of Taxes)
Coalville Urban District Council and A E Boyce (H.M. Inspector of Taxes)
Van den Berghs Ltd and Alexander Stirling Clark (H.M. Inspector of Taxes)
Mrs P Williamson and C Ough (H.M. Inspector of Taxes)
Thomas Smith Hudson and G N Wrightson (H.M. Inspector of Taxes)
Nelson Hippodrome Ltd and P E Clayton (H.M. Inspector of Taxes)
F W Dain (H.M. Inspector of Taxes) and George Montague Miller
Marston's Dolphin Brewery Ltd (in liquidation) and H.M. Loughnan (H.M. Inspector of Taxes)
The Exors of Sir Charles Owens, dec and G Inglis (H.M. Inspector of Taxes)
Alfred Leney & Co Ltd and A Whelan (H.M. Inspector of Taxes)
J Sydney Brocklesby and E G Merricks (H.M. Inspector of Taxes)

DEATH DUTIES.—Showing Cause.

In the Matter of John William Atkinson, dec
In the Matter of George Eli North, dec.
In the Matter of Annie Sharpe, dec.
In the Matter of George Bone, dec

## THE GUARANTEE SOCIETY LIMITED.

Mr. W. T. Maudsley has been appointed a Director of The Guarantee Society Limited in the place of the late Sir George Duncombe, Bart.

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

The Judicial Committee of the Privy Council will resume its sittings on Monday, 15th January, with a list of twenty-six appeals, compared with thirty-six for the corresponding term last year. In the present list sixteen appeals are from India, six from Canada, and one each from Australia, Cyprus, Eastern Africa and the West African Court of Appeal.

# Stock Exchange Prices of certain Trustee Securities.

**Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 25th January, 1934.**

| | Div. Months. | Middle Price 10 Jan. 1934. | Flat Interest Yield. | | | †Approximate Yield with redemption | | |
|---|---|---|---|---|---|---|---|---|
| | | | £ | s. | d. | £ | s. | d. |
| **ENGLISH GOVERNMENT SECURITIES** | | | | | | | | |
| Consols 4% 1957 or after | FA | 110¼ | 3 | 12 | 7 | 3 | 7 | 1 |
| Consols 2½% | JAJO | 75½ | 3 | 6 | 5 | — | | |
| War Loan 3½% 1952 or after | JD | 101⅜ | 3 | 8 | 10 | 3 | 7 | 6 |
| Funding 4% Loan 1960-90 | MN | 112¾ | 3 | 10 | 11 | 3 | 5 | 3 |
| Victory 4% Loan Av. life 29 years | MS | 111½ | 3 | 11 | 7 | 3 | 7 | 3 |
| Conversion 5% Loan 1944-64 | MN | 116⅜ | 4 | 5 | 8 | 3 | 0 | 6 |
| Conversion 4½% Loan 1940-44 | JJ | 109¼ | 4 | 2 | 4 | 2 | 18 | 2 |
| Conversion 3½% Loan 1961 or after | AO | 102⅝ | 3 | 8 | 5 | 3 | 7 | 3 |
| Conversion 3% Loan 1948-53 | MS | 99¼ | 3 | 0 | 5 | 3 | 1 | 1 |
| Conversion 2½% Loan 1944-49 | AO | 93 | 2 | 13 | 9 | 3 | 1 | 10 |
| Local Loans 3% Stock 1912 or after | JAJO | 88¼ | 3 | 8 | 0 | — | | |
| Bank Stock | AO | 349½ | 3 | 8 | 8 | — | | |
| Guaranteed 2¾% Stock (Irish Land Act) 1933 or after | JJ | 79½ | 3 | 9 | 2 | — | | |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 87½ | 3 | 8 | 7 | — | | |
| India 4½% 1950-55 | MN | 108½ | 4 | 2 | 11 | 3 | 15 | 7 |
| India 3½% 1931 or after | JAJO | 88½ | 3 | 19 | 1 | — | | |
| India 3% 1948 or after | JAJO | 76 | 3 | 18 | 11 | — | | |
| Sudan 4½% 1939-73 | FA | 111 | 4 | 1 | 1 | 2 | 3 | 2 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 108 | 3 | 14 | 1 | 3 | 7 | 6 |
| Tanganyika 4% Guaranteed 1951-71 | FA | 108½ | 3 | 13 | 9 | 3 | 6 | 9 |
| Transvaal Government 3% Guaranteed 1923-53 Average life 12 years | MN | 101 | 2 | 19 | 5 | — | | |
| L.P.T.B. 4½% "T.F.A." Stock 1942-72 | JJ | 109½ | 4 | 2 | 2 | 3 | 4 | 1 |
| **COLONIAL SECURITIES** | | | | | | | | |
| Australia (Commonw'th) 4% 1955-70 | JJ | 104 | 3 | 16 | 11 | 3 | 14 | 6 |
| *Australia (Commonw'th) 3¾% 1948-53 | JD | 100 | 3 | 15 | 0 | 3 | 15 | 0 |
| Canada 4% 1953-58 | MS | 106 | 3 | 15 | 6 | 3 | 11 | 6 |
| Natal 3% 1929-49 | JJ | 95 | 3 | 3 | 2 | 3 | 8 | 8 |
| New South Wales 3½% 1930-50 | JJ | 96 | 3 | 12 | 11 | 3 | 16 | 10 |
| New Zealand 3% 1945 | AO | 96 | 3 | 2 | 6 | 3 | 8 | 11 |
| Nigeria 4% 1963 | AO | 106 | 3 | 15 | 6 | 3 | 13 | 4 |
| Queensland 3½% 1950-70 | JJ | 95 | 3 | 13 | 8 | 3 | 15 | 2 |
| South Africa 3½% 1953-73 | JD | 99 | 3 | 10 | 8 | 3 | 10 | 11 |
| Victoria 3½% 1929-49 | AO | 97 | 3 | 12 | 2 | 3 | 15 | 0 |
| W. Australia 3½% 1935-55 | AO | 97 | 3 | 12 | 2 | 3 | 14 | 1 |
| **CORPORATION STOCKS** | | | | | | | | |
| Birmingham 3% 1947 or after | JJ | 85 | 3 | 10 | 7 | — | | |
| Croydon 3% 1940-60 | AO | 94 | 3 | 3 | 10 | 3 | 7 | 1 |
| Essex County 3½% 1952-72 | JD | 102 | 3 | 8 | 8 | 3 | 7 | 2 |
| Hull 3½% 1925-55 | FA | 98 | 3 | 11 | 5 | 3 | 12 | 8 |
| Leeds 3% 1927 or after | JJ | 86 | 3 | 9 | 9 | — | | |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | JAJO | 100 | 3 | 10 | 0 | — | | |
| London County 2½% Consolidated Stock after 1920 at option of Corp. | MJSD | 73 | 3 | 8 | 6 | — | | |
| London County 3% Consolidated Stock after 1920 at option of Corp. | MJSD | 87½ | 3 | 8 | 7 | — | | |
| Manchester 3% 1941 or after | FA | 86 | 3 | 9 | 9 | — | | |
| Metropolitan Consd. 2½% 1920-49 | MJSD | 93 | 2 | 13 | 9 | 3 | 1 | 3 |
| Metropolitan Water Board 3% "A" 1963-2003 | AO | 89 | 3 | 7 | 5 | 3 | 8 | 4 |
| Do. do. 3% "B" 1934-2003 | MS | 90½ | 3 | 6 | 4 | 3 | 7 | 1 |
| Do. do. 3% "E" 1953-73 | JJ | 95 | 3 | 3 | 2 | 3 | 4 | 6 |
| Middlesex County Council 4% 1952-72 | MN | 109 | 3 | 13 | 5 | 3 | 7 | 0 |
| Do. do. 4½% 1950-70 | MN | 113 | 3 | 19 | 8 | 3 | 9 | 5 |
| Nottingham 3% Irredeemable | MN | 86 | 3 | 9 | 9 | — | | |
| Sheffield Corp. 3½% 1968 | JJ | 100½ | 3 | 9 | 8 | 3 | 9 | 6 |
| **ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS** | | | | | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 108½xd | 3 | 13 | 9 | — | | |
| Gt. Western Rly. 4½% Debenture | JJ | 116½xd | 3 | 17 | 3 | — | | |
| Gt. Western Rly. 5% Debenture | JJ | 128½xd | 3 | 17 | 10 | — | | |
| Gt. Western Rly. 5% Rent Charge | FA | 124½xd | 4 | 0 | 4 | — | | |
| Gt. Western Rly. 5% Cons. Guaranteed | MA | 123½ | 4 | 1 | 0 | — | | |
| Gt. Western Rly. 5% Preference | MA | 112 | 4 | 9 | 3 | — | | |
| Southern Rly. 4% Debenture | JJ | 107 | 3 | 14 | 9 | — | | |
| Southern Rly. 4% Red. Deb. 1962-67 | JJ | 106½ | 3 | 15 | 1 | 3 | 12 | 6 |
| Southern Rly. 5% Guaranteed | MA | 121½ | 4 | 2 | 4 | — | | |
| Southern Rly. 5% Preference | MA | 109 | 4 | 11 | 9 | — | | |

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.